DAVIS (THOS G.C.)

SPEECH

OF

THOMAS G. C. DAVIS,

OF THE ST. LOUIS BAR,

UPON THE PLEA OF

INSANITY,

IN BEHALF OF

ROBERT C. SLOO, ESQ.,

INDICTED FOR THE MURDER OF

JOHN E. HALL.

Delivered at Shawneetown, Ills., August 13, 1857.

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GEORGE KNAPP & CO., PRINTERS AND BINDERS.

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On the 23d day of the trial Thos. G. C. Davis, Esq., closed the argument for the defence as follows:

May it please the Court,—Gentlemen of the Jury:

The exhibition of the wisdom and moderation of the law of this country, which we have witnessed thus far in the progress of this trial, is to my mind one of the most sublime spectacles ever displayed before the eyes of the civilized world. I trust, gentlemen, that you and I, and all of us, will retire from this tribunal with a consciousness that we are not only wiser but better men than we were before. We have witnessed in the course of this painful investigation something which was perhaps to most of us new. We have heard, many of us, doubtless, things of which we had no former conception. We have been taught by this investigation how mysterious are the workings of the human mind, and how unaccountable, on many occasions, are the acts of men. By this too, gentlemen, we are taught to rely more firmly than ever upon that Divine guidance which alone can conduct us in the path which we should travel.

In whatever I shall say in reference to this cause, I trust that you will discover a disposition to treat it in a proper spirit, and that you will trace naught of malignity or malevolence on my part. I shall tread lightly upon the ashes of the dead. Would to God that I with you could restore to the family of John E. Hall the husband and the father! Would to God the act which has brought this unfortunate young man to this bar had never transpired! Much pain, which has been experienced by you and all present in the investigation of this case, would have been saved but for this unfortunate deed.

What do we behold? The trial of a young man, who, until within the last few years, gave great promise of becoming an ornament to his country, and the solace of a kind father and mother in their declining years, brought to this bar in consequence of an act done by him under circumstances of a most peculiar character—so peculiar as to impress themselves upon every gentleman as being strange in the extreme.

Who is the man that has been sent to his final account? He was high in the confidence of the people of the county of Gallatin ; by their partiality he had been elevated to trusts of importance, and he doubtless endeavored to execute those trusts in the best way he was capable. He is deprived of his life at the very time when he is engaged in the performance of his official duty. He is, in the language of one of the witnesses (Mr. Ingersoll), reading to him from a book certain things that were to be transcribed. In that situation, and perhaps at a time when he had no expectation of receiving the deadly ball, he receives a bullet from the pistol of the unfortunate defendant; he writhes under its effect, and expires in a few moments.

There is something in this which must necessarily strike every man with pain, and there is something in this, gentlemen of the jury, which can not fail to impress itself upon the mind of every man as being most remarkable—as quite out of the order of common events.

Great latitude of remark has been indulged in by gentlemen in the discussion of this case thus far. Many things have been said that might have been much better left unsaid. Many things have been said on both sides, perhaps, which were not calculated to instruct the ear of the jury in the ascertainment of the fact which they are empannelled to try. If I entertain any hostile feeling towards any man engaged in this cause, I am unaware of it ; if I entertain any unkind feelings towards any gentleman engaged in the prosecution of this cause, either counsel or friend of the deceased, I am unconscious of it. I have no reason to entertain such feelings. I knew John E. Hall myself ; towards him I entertained, while living, a kindly feeling ; towards him, in his grave, I entertain a like feeling. I come not here to asperse John E. Hall. I have a holier, better, and nobler purpose—a better object in view. I come here, gentlemen, for the sole purpose of endeavoring, in my humble way, to assist you in the ascertainment of truth, and to bring you by that means to such conclusions as are warranted

by law and by morals. I should have been pleased if Mr. Allen could have done us the justice to imagine that we were not fabricating a defence. In the heat of debate gentlemen frequently express themselves in a way in which they would not express themselves if they were cooler, or better understood the just import of their words.

Mr. Allen has told you, gentlemen of the jury, that a horrid murder has been perpetrated. I concede the fact that a horrid homicide has been committed; but, as you have been repeatedly told, it is not every homicide that amounts to a murder. Mr. Allen has told you further, gentlemen of the jury, that it was necessary to make some defence; and that, there being no valid defence to this prosecution—there being no rational grounds upon which to meet it—it became necessary that the defendant's counsel should resort to means that are unjust and untrue. In other words, that after the fact of the homicide was proved, with its accompanying circumstances, and the State had made out her case against the defendant at the bar, it became necessary that some show of defence should be made; and, there being no true defence, one was fabricated. In the whole course of my experience, and it has been somewhat extensive, I have not received from any one such an accusation. I have never been informed before, in the whole course of my experience as a lawyer, that I had been engaged in the fabrication of facts to exonerate an unfortunate man, whom I defended, from the responsibilities justly devolved upon him by his own act. Mr. Allen did not mean to say all that his language imports. Mr. Allen did not mean to be understood as imputing to the gentlemen engaged in this defence so dishonorable a character of conduct as the fabrication of facts to exonerate the defendant from the penalty of the law. He has known some, at least, of the gentlemen engaged in this defence too long to be justified in the assertion of such a thing. Towards Mr. Allen I entertain the same kind feelings that I entertain toward the deceased. Toward the other gentlemen I entertain like feelings; and if, in the course of the discussion, one word shall unfortunately slip from my lips which is not approved by my head and my heart, I shall be sorry for it. If I shall asperse the memory of any man, or make a wrong ascription of motives to any man, I shall be sorry for it, for such is not my intention. I have a superior and nobler and holier office to fulfil. I am here, gentlemen of the jury, to endeavor, by whatever means I may possess, gifts of nature and little learning that

I may have accumulated during years of toil and difficulty through which I have passed, to defend an unfortunate young man, under a most unfortunate state of circumstances; and that duty, with the help of God, shall be fully performed on my part, whatever may result from its performance.

If any case could be surrounded with difficulty, if any case could justify an advocate in appealing to a jury for their patient attention to every word and act of his in the progress of the investigation of it, this is that case. I shall then, gentlemen of the jury, beg the attention of the court, and solicit your patient hearing, while I endeavor in my way to present the law of this case, in connection with the facts to your consideration, and ask for your determination and candid decision.

I shall, gentlemen, in the first place, endeavor to make the law plain. After I shall have done that, I shall endeavor to answer the argument submitted by my learned friend Mr. Allen, in such a way as will, I trust, evince to you that he is mistaken; not incorrigibly mistaken, but mistaken because he has not had sufficient time perhaps for investigation and conclusion.

The statute of this State has been read to you; it has been read to you repeatedly; but I beg your attention to it once more, for, when my voice shall be still, no man will speak to you more for Robert C. Sloo; when I shall utter my last word all voices will be silent—all will be still—no man will be heard in his behalf; while the State will be represented by my distinguished friend, Mr. Logan.

I come to the question of intention. No man disputes the fact that John E. Hall is dead, and that he came to his death by the hands of Robert C. Sloo. It would be wicked and foolish to talk about that fact, for it is proven beyond controversy. We were ready in the commencement of this investigation to admit it. We told the gentlemen when they were exhibiting the clothes of the deceased, with the view, as we supposed, to inflame your prejudices, that we would admit that; and yet the gentlemen were not content with that declaration—they desired more; from what motive I will not say. I ascribe to them no improper motive. It may have been their desire to enact the part of Mark Antony over the body of Cæsar, but without intending to do wrong. I will suppose that the gentleman intended to hold them up as did Mark Antony the mantle over the dead body of Julius Cæsar, when he was appealing to the people of Rome to take away the lives of the few patri-

ots who had taken the life of that great tyrant. These gentlemen, perhaps, saw in that something that might be worthy of imitation. They may have supposed, gentlemen, that they might exibit themselves before you to advantage by holding up that bloody shirt and that bloody coat, and asking you to look "there went the deadly bullet!" That, I think, must have been the motive. If that was the motive, then, gentlemen of the jury, it is not dishonorable—it is but a noble impulse of the heart to seek to rise; but if there was a different motive, if the object was to inflame your passions by the exhibition of blood, then I tell you it was wrong. I will suppose they intended to do right.

I read from 1st Div. Crim. Code, p. 152, Rev. Sat. of Illinois:

Section 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be an union or joint operation of act and intention, or criminal negligence.

Sec. 2 Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

Sec. 3. A person shall be considered of sound mind, who is neither an idiot nor lunatic, nor affected with insanity; and who has arrived at the age of fourteen years, or before that age if such person know the distinction between good and evil.

Sec. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor.

Sec. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged; *Provided*, the act so charged as criminal shall have been committed in the condition of insanity.

The section of the law particularly applicable to this case is the third, which is punctuated thus—"not affected with insanity;" I shall address myself, gentlemen of the jury, to an inquiry into the meaning of this language, and I shall endeavor to prove to you that the construction put upon it by my friend Mr. Allen is not only not supported by the language of the section itself, but is absolutely contrary to its just interpretation by the rules of law apart from the section. He reads to you the second clause of the third section of the first chapter on Criminal Jurisprudence, and tells you that the second clause, applying the test of the knowledge of right and wrong, is applicable to the first clause. I state it in the presence and hearing of the court—I state it upon my responsibility as a lawyer of some standing and of some experience, that this construction is not only wrong, but it does violence to the language in the clause and to the principles of law which govern in such cases. I will endeavor to make this proposition clear, by reference to the common law as it stood prior to the time

of the enactment of this statute, and deduce my conclusion from the common law and statute in connection.

Down to the time of the trial of Hadfield in 1800, the rule prevailed throughout England, that, in order to exonerate a man from responsibility for crime on the plea of insanity, it was necessary that he should be totally deprived of his understanding. That was the rule laid down by Lord Coke and by Lord Hale. Lord Coke laid down the rule to be, that in order to establish the irresponsibility of a party, who perpetrated a criminal act, upon the score of insanity, it was necessary that it should be shown to the jury that he was totally deprived of understanding. Lord Erskine, in the argument of the case of Hadfield, evinced beyond controversy the utter absurdity of the old test; he showed to the satisfaction of the court, and of the learned judge who presided at that trial, that the test laid down by Coke was not founded on human philosophy or human experience, and ought to be repudiated. Lord Kenyon, who tried Hadfield for shooting at George the Third, was so prejudiced against the opinion then being presented by Mr. Erskine, that he could scarcely listen to it with patience. He thought that the views being presented by that learned gentleman were not in keeping with the philosophy of the human mind, and the principles of the common law laid down for the government of courts and juries in the trial of criminal causes; but, before that learned advocate had concluded his argument, Lord Kenyon came to the conclusion that he was right, and asked the counsel for the king if he had anything more to say—demanded of the attorney general whether he had anything to allege in addition to what had been proved. He said he had nothing, and he was a learned man—no less a man than John Mitford, afterwards Lord Redesdale. Then said the judge, prejudiced as he was, "this man must be acquitted, for the law has been well stated by Mr. Erskine." What was that law as stated by Mr. Erskine? It was that although the party may be in full possession of his mental faculties, although he may be capable of distinguishing between right and wrong, although he may have a subtle and astute genius and capacity for investigation, yet he is not responsible if he is laboring under a delusion. That was a great advance in the criminal law in reference to insanity. It was regarded at the time, gentlemen, as one of the greatest achievements that had ever been made by an advocate in vindication of sound principles.

"On the trial of Hadfield"—this is the case in which Lord

Erskine manifested the total absurdity of the old rule—"there was a great step made in this branch of medical jurisprudence, and it might have been expected that the victory thus gained over professional prejudices and time-honored errors would be felt in all subsequent decisions. But, though the day has gone by when such insanity only as is attended by total deprivation of memory and understanding can be admitted in excuse for crime, the test offered by Erskine was altogether too simple and too philosophical to be readily adopted by minds that delight in subtleties and technicalities."

Gentlemen of the jury, the attorney general did lay down the proposition, in Hadfield's case, that in order to protect a criminal from responsibility, upon the plea of insanity, there must be a total deprivation of memory and understanding. That was the doctrine of Lord Coke, that was the doctrine of Lord Hale, that was the doctrine of the darker ages of the common law; but a flood of light was shed upon the subject by the great genius of Erskine. The law was rescued from the depths of ignorance into which it had been plunged. Erskine said, what every man knows, that such a thing as total deprivation of memory and understanding never takes place in a madman; that insanity does not, in its ordinary form, deprive the party absolutely or totally of memory or understanding. There is no such case on record, and the whole history of mankind is the very reverse of this absurd proposition. The whole knowledge of man in reference to insane conduct shows the absurdity of the principle. If to make a madman it is necessary that he shall be deprived totally and absolutely of his memory and his understanding, then, in the language of Lord Erskine, there never was a madman on the face of the earth, and there never will be one; for madness is never accompanied by such total loss of understanding and memory.

Gentlemen, it will be my endeavor to make this thing as plain as my poor powers will enable me to make it, for there is difficulty in it. I read now what Hale says about criminal responsibility: "There is a partial insanity," says he, "and a total insanity." The former is either in respect to things, *quoad hoc vel illud insanire*, (to be insane as to this or that thing.) Some persons that have a competent use of reason in respect of some subjects, are yet under a particular *dementia* in respect to some particular discourses, subjects, or applications, or else it is partial in respect of degrees; and this is the condition of very many, especially melancholy per-

sons, who for the most part discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason, and this partial insanity seems not to excuse them"—mark the words!—" seems not to excuse them in the committing of any offence for its matter capital; for, doubtless, most persons that are felons of themselves and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes: the best measure that I can think of is this—such a person as laboring under melancholy distempers hath yet ordinarily as great understanding, as ordinarily a child of fourteen years hath, is such a person as may be guilty of treason or felony.

" Again, a total alienation of the mind, or perfect madness; this excuses from the guilt of felony and treason: *de quibus infra.* This is that, which in my Lord *Coke's Pleas of the Crown*, p. 6, is called by him absolute madness, and total deprivation of memory."

Lord Hale declares that there are two kinds of insanity, the one partial and the other total; and he says this partial insanity is so closely connected, or the line which separates it from total insanity is so fine, as scarcely to be discoverable by the most learned men who may go about the investigation; and, that being the fact, he admonishes courts and juries to be exceedingly cautious in coming to conclusions in reference to the existence of one or the other degree of insanity; and he says that this partial insanity of which he has spoken *seems* not to exonerate the man who perpetrates a criminal act under its influence. That judge was one of the most honorable that ever sat on the English bench, and, *for the time in which he lived*, one of the most enlightened that ever adorned the bench of that or any other country; and one of the most upright men that ever administered justice in a temple where purity only should be permitted to enter; and he, with that humanity which characterized the whole course of his life, admonishes courts and juries to be cautious in coming to a conclusion in reference to the existence of one or the other degree of insanity, lest on the one hand we might exhibit inhumanity towards those suffering from disease, and on the other we might give too much indulgence to great crimes.

But, with all the humanity which characterized the whole course of Lord Hale's public career as a judge, he adopted the old rule. Had Lord Hale lived in the present age, had he possessed the advantages which are now everywhere attainable, he would have entertained a totally different opinion, and would have laid down a doctrine materially different. Had he had the advantages which have resulted from the institution of hospitals for the insane in every civilized country of Europe and in the United States—the results of the observation of gentlemen interested in the treatment of the unfortunate beings who are committed to these hospitals for cure and protection, he would have entertained and given a different view of the law.

Lord Hale says that by the common law of England it is necessary that there should be a total deprivation of memory and understanding to protect a defendant against responsibility for the commission of a criminal act and from punishment. That was the rule of the English common law at that time; that rule was afterwards modified—not perhaps until Erskine appeared in court to defend a man who attempted to kill the sovereign of his country. Remember, gentlemen—remember, I pray you, that Hadfield, of whom I have spoken, attempted to assassinate the King of England, in a theatre, in his seat, and in the midst of his loyal subjects; and, although it was the King—although in countries governed by monarchs the people are generally inclined to think more highly of the character of the head of the government than of any mere citizen or man—notwithstanding the attempt on the part of Hadfield to assassinate the King in the presence of his assembled subjects, and when he was witnessing the exhibition of plays, to which he retired to protect him from exhaustion,—nothing was done to that man by way of violence: he was arrested—tried according to the forms of the common law—a great advocate was appointed by the King to defend him. Lord Erskine was not an advocate in the cause by choice of the defendant himself merely, but he was assigned under the common law to defend him. Mark what an exhibition of a sublime principle of government was made in that case! The King, at whom a deadly shot had been aimed—the King, whose life Hadfield had attempted to take away—appointed, at the request of Hadfield, Erskine, the ablest advocate in the kingdom, to defend him against the charge of treason, which must have resulted, in the event of his conviction, in his execution. I may remark, that we have no such exhibition here; none was needed—

none was asked for—none was desired. If it had been, perhaps there would have been such an one. Robert C. Sloo is defended, as was remarked yesterday by Mr. Allen, by hired counsel and advocates, and they have endeavored (those who have preceded me) to perform their duty toward him; I am now endeavoring to perform that which remains on my part, lest all may not be right. Hadfield was acquitted, under the appointment of the King, through the instrumentality of his advocate, on the ground of delusion.

Then in this case, gentlemen, there was no test of the knowledge of right and wrong laid down for the guidance of the jury. Lord Erskine stated a proposition that no man dare controvert and pretend to have any knowledge of the insane. He laid down the proposition so clearly as to be approved by the experience of the whole civilized world, that a man might be in possession of his faculties and still labor under such a delusion as to exonerate him from the consequences of an act committed in that state of mind.

But what do we see, gentlemen? At the end of twelve years from that time an unfortunate man of the name of Bellingham, in 1812, assassinated the Hon. Spencer Perceval, the Prime Minister of England, in the House of Commons and in presence of the assembled representatives of the nation. He was rushed to trial; a grand jury was summoned to present an indictment; he was indicted in two or three days. It was not an attempt to kill the King, whom the people cherished as the apple of their eye, but it was a mere Prime Minister who had been assassinated; and Bellingham was conducted to trial in the course of a few days, and was tried in such a way as to disgrace the tribunal that had been honored by being presided over by such a man as Hale.

I am coming now to show you how this common law rule has been oscillating like the pendulum of a clock. On the trial of Bellingham, in 1812, the rule which was laid down by Lord Kenyon in the case of Hadfield was departed from, and a judicial butchery took place. Lord Chief Justice Mansfield presided at that trial, and he told the jury who tried that unfortunate man, that the test of responsibility was the knowledge of right and wrong. After the lapse of twelve years, we find an English judge returning to the old absurdity of the common law. He laid down the doctrine to be, that the knowledge of right and wrong is sufficient to make a man responsible for any criminal act committed in the condition of insanity; and poor Bellingham, in a very few days from the time that he assassinated Mr. Perceval, was hurled into eternity, a mad-

man, under a rule of law—a decision which was rather travelling back into the dark ages than keeping up with the progress of the times.

What rule of the common law have we then? What construction are we to put upon this statute in order to enable a jury to understand the law of the land? What principle is to be found in the cases which must be applied to the construction of this statute, that we may know what is the law of the State of Illinois as to responsibility for the commission of crime by one affected with insanity. Is it the old and barbarous rule which obtained in the times of Lords Coke and Hale; or is it a rule, the result of enlightened reason, science and progress, which have shed their light during the last hundred years, to a goal of tolerable certainty? No man will say for a moment that we should go back to the old rule of the total deprivation of understanding. Then I demand to know what is the rule to govern in this case—what common law rule shall obtain as a rule for the construction of the statute of this State. Is it the rule laid down in Hadfield's case, that the knowledge of right and wrong is no test, but the mere presence of delusion is the test by which to see if the party is responsible for the commission of crime or not?

It will be my purpose now to evince the correctness of my views of the just construction of the provisions of this statute, by reading a few cases. "In the trial of Lawrence, at Washington, in 1835, for shooting at President Jackson, the jury were advised by the court to regulate their verdict by the principles laid down in the case of Hadfield, which had been stated to them by the district attorney." Lawrence tried to assassinate General Jackson at the funeral of the Hon. W. R. Davis, a member of Congress from South Carolina, and what did the court say? That the jury should "regulate their verdict by the principles laid down in Hadfield's case;" and it is hardly necessary for me to remark in this connection, that Lawrence was acquitted. He had attempted to assassinate the head of the government of the United States, General Jackson, than whom no man ever exerted a greater influence upon the minds of his countrymen, or was more devoted to his country's interests.

"In the case of Theodore Wilson, tried in York county, Maine, in 1836, for the murder of his wife in a paroxysm of insanity, the court charged the jury that if they were satisfied the prisoner was not of *sound memory* and discretion at the time of commit-

ting the act, they were bound to return a verdict of acquittal." And yet we are told that the right and wrong test is that which should be applied to this case. I read farther, gentlemen, for I shall content myself with nothing less than a thorough exhibition of the law as it is. "This is all that could be wished," says the author, "and considering that two highly intelligent physicians had given their opinion in evidence that the prisoner had some consciousness of right and wrong, and that the Attorney General, although he admitted the existence of insanity in some degree, deemed that it was of not sufficient extent to exempt him from punishment, supporting his assertion on the authority of the leading English cases relating to insanity; this decision indicates an advance in the criminal jurisprudence of insanity that does credit to the humanity and intelligence of that court. In the trial of Cory for murdering Mrs. Nash, in New Hampshire, in 1829, the court, Chief Justice Richardson, stated in his charge to the jury, that the only question for them to settle was whether he was of sane mind when the deed was done." Whether he was of sound mind—not whether he was incapable of distinguishing between right and wrong—not whether he was totally deprived of his memory and understanding; but simply, if they should be of opinion that he was not of sane mind at the time of the commission of the act, he was entitled to an acquittal. This is not all, gentlemen: "The same language was used by the same court on the trial of Enscott for the murder of Mrs. Cochran, in 1834. On the trial of Rogers, in July, 1843, for the murder of Mr. Lincoln in the State prison of Massachusetts, the court, Chief Justice Shaw, charged the jury, that insanity or delusion is an excuse for crime in two ways—first, where it amounts to a firm belief that one is liable to lose his own life or suffer some great bodily injury; secondly, where some violent outbreak occurs, which, taken in connection with former acts, indicates that the will was overcome. The questions for them to decide were whether such a delusion existed in the mind of the accused; whether he did the act under an insane but firm belief that the deceased was going to shut him up with some dangerous design, and not for a slight punishment; whether the facts indicate that the deed was done at a moment when the delusion was uncontrollable. On the trial of Abbot for killing his wife, in 1841, by the Supreme Court of Connecticut, the jury was instructed to acquit the prisoner, 'if they found that at the time of committing the act he was insane—had not sufficient understanding to distinguish right from wrong, and did not know

that the murder of his wife was an offence against God and nature.' Similar language was used by the court on the trial of Mercer for the murder of Herberton, in New Jersey, April, 1843."

We have no less than four American cases totally repudiating the old test of right and wrong as being applicable to criminal trials where the plea of insanity is interposed. I know that you may find many opinions that militate against this view of the law; I know the learned gentlemen that prosecute this unfortunate man may be able to bring a vast number of decisions that hold the converse of this legal proposition; I know that they can bring a case from the State of Ohio, tried not many years ago—I allude to the case of Birdsall, in which the court laid down the old, antiquated and abominable doctrine, that a man could not be exonerated from responsibility for crime committed under the influence of insanity contracted by drunkenness—not the immediate result of drunkenness at that time—an opinion repudiated by a much higher authority. I allude to the authority of the Judge of the Second Circuit of the United States in deciding the case of Drew, who had been drinking for weeks, and who had resolved to throw his rum and brandy overboard and be a sober man; I know well that Mr. Logan will read from a book written by Russell on criminal jurisprudence, and he will find the old test laid there; I know he can read from books that militate with the view I have presented; but I insist that the modern view of the law is accordant with the four cases I have read to you; I insist that they are in perfect keeping with the legislation of this State in reference to this infirmity. These opinions are in direct keeping, word for word, and syllable for syllable, with the principle contained in the third section of the act to which I have turned your attention.

What does that act say? That a man "affected with insanity" shall not be convicted of a crime that he may commit in a condition of insanity; an idiot shall not be found guilty, "nor a lunatic, nor 'one' affected with insanity." Is there any difference between the reading of this statute and the decisions which I have read to you? Is there any difference in mere language? Is there any difference in principle? If there be, I call upon the gentlemen to evince it clearly by argument. I shall not content myself with the mere opinion of any gentleman; I am one who investigate questions for myself, and when I come to a conclusion in reference to any given question, after laborious investigation, I think that I may be entitled to express that conclusion to the court and jury, and to ask

if it be not right. Here it is expressly provided that a person shall not be convicted if he be lunatic or in a condition of insanity. What have the learned gentlemen who have testified on the stand in reference to the condition of this unfortunate man told us? What have they declared upon their solemn oaths, based upon an attentive listening to the testimony of the several witnesses who preceded them, and upon their actual experience, knowledge and learning? They have given it as their clear opinion that Robert C. Sloo, at the time of the commission of this homicide, was in a condition of insanity. They have told us that they entertain no doubt about the fact that Robert C. Sloo, when he killed poor Hall —I speak of him with tenderness and kindness—was laboring under insanity, and in the language of the learned gentleman, Dr. McFarland, was "in a condition of insanity at the very moment of the homicide." His opinion, gentlemen, comes up to the whole requirement of the statute, for he has declared to you, that, in his opinion, Sloo, at the time of the commission of the homicide, was in a condition of insanity.

Mr. Allen has read to you this morning some authority supporting his view of the right and wrong test. I read to you from authority higher than any other authority, English or American; I read to you from authority, the combined product of legal and medical learning; I read you an opinion from the gentleman who is the author of the same book from which Mr. Allen read, but who has written this book subsequent in point of time; from a book devoted to the consideration of this question, and not questions of criminal law generally, as his book is. Mr. Allen has read you from this, page 37, *Wharton's Medical Jurisprudence.* I will read—the head is, "When the defendant is incapable of distinguishing right from wrong in reference to the particular act." "Under this head may be enumerated persons afflicted with idiocy or dementia, or with general mania. It is certain that wherever such incapacity is shown to exist, the court will direct an acquittal; or, if a jury will convict in the teeth of such instructions, the court will set the verdict aside. The authorities to this effect are so numerous that a general reference to them is all that is here necessary; it being observed at the same time, that while the earlier cases lean to the position that such deprivation of understanding must be general, *it is now conceded that it is enough if it is shown to have existed in reference to the particular act.*

"To precisely this effect is the answer of the fifteen judges to

the questions propounded to them by the House of Lords, in June, 1843,—answers which were extra-judicially delivered, and which, therefore, though of weight as *opinions*, are not binding as authority. 'The jury,' they said, 'ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party was laboring und r such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.' 'To precisely this effect,' he says, after having first stated the repudiation of the old test of right and wrong in the abstract, 'to precisely the same effect,' as is stated in the first paragraph, 'is the answer of the fifteen judges to the questions propounded to them by the House of Lords.'" How far has he said that this right and wrong test is a good one? He has stated that authorities have laid it down as being a good test in reference to the act in question; but has he stated that such is law at the present time? No! he has stated no such thing; but he says to precisely the same effect is the opinion of the fifteen judges, which are mere opinions and not entitled to consideration as authorities, because they were not delivered in a case.

Then I turn your attention to the consideration of the right and wrong test, as he delivers it. Mr. Allen has told you that this author lays down the test of right and wrong as the criterion of responsibility. I tell you he lays down no such thing; but the reverse of it. He says: (Wharton and Stille's Medical Jurisprudence, page 46) "The right and wrong test can never be rightly applied, because it rests in the conscience, which no human eye can penetrate." Does Mr. Wharton, at the same time that he says that the right and wrong test can never be applied, intend to adopt the opinion of the English judges in response to the questions propounded to them by the House of Lords? Certainly not. He repudiates the old test in all its parts, and in every particular; and why does he repudiate it? He repudiates it, gentlemen of the jury, for the plain, simple and philosophical reason that no man can penetrate the conscience of his neighbor and in that conscience discover *indicia* of insanity which shall determine whether he is insane or sane. Those philosophical tests, which every man must feel to be just and reasonable, may be too simple for the learned in

the technicalities of law in England and of this country. Has, then, Wharton adopted the right and wrong test? No. What then, I demand, is the test? Is it the knowledge which enables the party to discriminate between right and wrong, and does it devolve on him to show to his peers who sit in judgment upon him that he was not in possession of his faculties so as thus to discriminate? I demand to know this—I demand to know, in addition, upon what principle of reason or human experience it is predicated? Four American cases, backed by the deliberate opinion of Mr. Wharton, one of the most learned men in criminal jurisprudence in this or any other country, support the view which I take of the state of the law in reference to the responsibility of a party committing an act of violence under the influence or an insane delusion, or of any form of insanity which Heaven in its wisdom shall visit upon him.

My rule then is, and I give it to you, gentlemen of the jury, as the conviction of my judgment—the honest sentiment of my heart; my rule is, that by the statute of this State no man is liable to punishment for crime, if he commit the crime in a condition of insanity; for so the legislators of your State have declared, and so I understand them, and so I expect to continue to understand them.

But Mr. Allen has read to you an opinion recently delivered in the case of Huntingdon, in the city of New York. For what was Huntingdon upon his trial? For forgery. It was because he had forged bills of exchange and other commercial paper to an almos indefinite extent. He was rolling in wealth—he had made every provision for luxury—had three or four houses, and occupied or let them to his friends, as his generosity or caprice governed him. It was contended that he was laboring under insanity. What form of insanity? Monomania for forging paper; for dealing in commercial paper; for flooding the country with evidences of debt. That was the form of insanity insisted upon, and that therefore he could not be convicted. A few gentlemen testified that they believed he was laboring under insanity; true, the judge lays down the doctrine that a man must be unable to discriminate between right and wrong in reference to the particular act; true, that judge says something in reference to the weight to be attached to the testimony of medical witnesses; true, the judge nowhere expresses the opinion laid down in the books that their opinions are entitled to the highest consideration, and are absolutely authoritative. You have, then, his opinion in reference to the power to discriminate

between right and wrong as to a given act. Did he know that it was wrong to forge paper upon his neighbors? That was the question that was subjected to the investigation of the jury. Did he know that it was wrong to forge paper—was there any evidence of disease on his part, sir? Had Heaven afflicted him, or had he abused himself until he had made a wreck of his understanding, or had impaired his memory so that when he read a book he was unable to remember the contents of it ten minutes? Is there such evidence in that case as there is in this? Is there any parallel then between that case and the case of Sloo, even conceding the proposition of law, as laid down by Judge Capron, to be correct? In this connection I will read somewhat from the charge of Ch. Jus. Shaw, as delivered in the case of Rogers. Mr. Allen has read this charge with a double purpose; he has read it to show you that the opinions of medical gentlemen upon the question of insanity are not conclusive. I will treat that view of the subject in the first place. He has told you he would not weigh the testimony of Dr. McFarland against one feather, and that we are wrong when we tell you that the opinion of Dr. McFarland and other medical witnesses in this case are authoritative. (Rogers' Trial, p. 279–80.)

In general it is the opinion of the jury which is to govern, and this is to be formed upon the proof of facts laid before them. But some questions lie beyond the scope of the observation and experience of men in general, but are quite within the observation and experience of those whose peculiar pursuits and profession have brought that class of facts frequently and habitually under their consideration. Shipmasters and seamen have peculiar means of acquiring knowledge and experience in whatever relates to seamanship and nautical skill. When, therefore, a question arises in a court of justice upon that subject, and certain facts are proved by other witnesses, a shipmaster may be asked his opinion as to the character of such acts. The same is true in regard to any question of science; because persons conversant with such science have peculiar means, from a larger and more exact observation, and long experience in such department of science, of drawing correct inferences from certain facts, either observed by themselves, or testified to by other witnesses. * * * * * It is upon this ground, that the opinions of witnesses who have long been conversant with insanity in its various forms, and who have had the care and superintendence of insane persons, are received as competent evidence, even though they have not had opportunity to examine the particular patient, and observe the symptoms and indications of disease at the time of its supposed existence. * * And such opinions, when they come from persons of great experience, and in whose correctness and sobriety of judgment just confidence can be had, are of great weight, and deserve the respectful consideration of a jury.

"In general," Chief Justice Shaw says that the opinion of the jury is to control. "In general." Does he mean *always* when he merely says, *in general?* Does he mean to tell that jury, that in

no case is the opinion of medical gentlemen authoritative and conclusive? I think he intended no such thing. Why?

In general, then, the opinion of the jury is to govern. This is the language of Chief Justice Shaw; but there are some things that lie beyond the observation of men generally, and these things, I suppose, are just such cases as this. I say this to the court and jury, that when Mr. Wharton lays down the proposition of law, that the opinions of medical witnesses upon the question of insanity are authoritative, he means to declare what Ch. Jus. Shaw has stated, "That there are some questions that lie beyond the scope of the observations of ordinary individuals." How many men has any one of the jury known to be insane? Scarcely any. It has not been the misfortune, perhaps, of any one of you, gentlemen, to observe, in the whole course of your life, one single case of insanity; and, perhaps, the most any one of you has seen are not more than two or three men that were said to be insane. To what extent then would you regard your own opinions upon a question involving the sanity or insanity of a party? Would you look upon them, though you had large experience, as being entitled to the same weight and consideration as the opinion of a gentleman who has made the tour of Europe to examine six thousand persons laboring under this malady—would you regard them as entitled to the same weight and consideration as the opinion of a man who has had charge of a hospital for the insane for at least nine years—would you regard them as being entitled to any consideration in opposition to the opinion of a man who has read books upon the subject? I would to God that each of you had read every book that I have read on this question, and had considered it well before I commenced my task!

Mr. Allen says, however, that Dr. McFarland's opinion is entitled to no consideration—that he would rather have the opinion of any man in this community who had no theory to support, and who had not been contaminated by intercourse with the insane over whom he has exercised a supervision for a few years past. Mr. Allen would adopt the "eye test"—he would look at a man to see if he was insane. Mr. Freeman illustrated the perfect absurdity of such a test by several suppositions, which were enforced with a clearness that do justice to his character for sense.

Gentlemen of the jury, as to the question of the identification of the whole man—not a mutilated being, not a man laboring under disease and infirmity, but the whole man in the broad daylight

of noon—I will read you some cases to show you the fallibility of the "eye test" (Will's Circumst. Evid., p. 110):

It might be concluded by persons not conversant with judicial proceedings, that personal identification is seldom attended with serious difficulty, but such is not the case. Illustrations are numerous to show that what are supposed to be the clearest intimations of the senses are sometimes fallacious and deceptive, and some extraordinary cases have occurred of mistaken personal identity. Hence the particularity, and, as unreflecting persons too hastily conclude, the frivolous minuteness of inquiry by professional advocates as to the *causa scientiæ* (means of knowledge), in cases of controverted identity whether of persons or of things.

Two men were convicted at the Old Bailey sessions in 1797, before Mr. Justice Grose, of the murder of Syder Fryer, Esq., and executed; the identity of the prisoners was positively sworn to by a lady who was in company with the deceased at the time of the robbery and murder; but several years afterwards two men, who suffered for other crimes, confessed at the scaffold the commission of the murder for which these persons were executed.

Even the testimony of the senses, though it afford the safest ground for moral assurance, can not be implicitly depended upon, even where the veracity of the witnesses is above all suspicion. Sir Thomas Davenant, an eminent barrister, a gentleman of acute mind and strong understanding, swore positively to the persons of two men, whom he charged with robbing him in open daylight. But it was proved by the most conclusive evidence, that the men on trial were, at the time of the robbery, at so remote a distance from the spot that the thing was impossible. The consequence was that the men were acquitted; and sometime afterwards the robbers were taken, and the articles stolen found upon them. Sir Thomas, on seeing these men, candidly acknowledged his mistake, and it is said gave a recompense to the persons he prosecuted, and who so narrowly escaped conviction. It is probable that Sir Thomas was deceived by the broad glare of sunlight, but there can be no doubt of the sincerity of his impressions.

A young man articled to an attorney, was tried at the Old Bailey on the 17th and 19th of July, 1824, on five indictments for different acts of theft. A person resembling the prisoner in size and general appearance had called at various shops of the metropolis for the purpose of looking at books, jewelry and other articles, with the pretended intention of making purchases, but made off with the property placed before him while the shopkeepers were engaged in looking out other articles. In each of these cases the prisoner was positively identified by several persons, while in the majority of them an *alibi* was as clearly and positively established; and the young man was proved to be of orderly habits and irreproachable character, and under no temptation from want of money to resort to acts of dishonesty. Similar depredations on other tradesmen had been committed by a person resembling the prisoner, and those persons deposed that, though there was a considerable resemblance to the prisoner, he was not the person who had robbed them. The prisoner was convicted upon one indictment but acquitted on all the others; and the judge and jurors who tried the last three cases expressed their conviction that the witnesses had been mistaken, and that the prosecutors had been robbed by another person resembling the prisoner. A pardon was immediately procured in respect of that charge on which conviction had taken place.

A few months before the last mentioned case, a respectable young man was tried for a highway robbery committed at Bethnal Green, in which neighbor-

hood both he and the prosecutor resided. The prosecutor swore positively that the prisoner was the man who robbed him of his watch. A young woman, to whom the prisoner paid his addresses, gave evidence which proved a complete *alibi*. The prosecutor was then ordered out of court, and in the interval another young man, who awaited his trial on a capital charge, was introduced and placed by the side of the prisoner. The prosecutor was again put into the witness-box and addressed thus: "Remember, the life of this young man depends upon your reply to the question I am about to put; will you swear again that the young man at the bar is the person who assaulted and robbed you?" The witness turned his head toward the dock, when beholding two men so nearly alike, he became petrified with astonishment, dropped his hat, and was speechless for a time, but at length declined swearing to either. The prisoner was of course acquitted. The other young man was tried for another offence and executed; and a few hours before his death acknowledged that he had committed the robbery in question.

These are the tests that gentlemen would apply for the ascertainment of the presence or absence of insanity. The eye test, the test of looking at a man, when such a test proves frequently to be fallible in reference to the whole man. Such tests are not fitted to the times in which we live; such tests have been demonstrated to be wrong too often, to be relied upon in this day and age, and ought not to be applied, as I humbly conceive, in any case whatever. This book is perfectly full of such cases.

But, gentlemen of the jury, suppose that I am mistaken in reference to the law as I have endeavored to lay it down to you; suppose that the real test is the capacity to distinguish between right and wrong in reference to the *particular act*, at the time of its commission; suppose that to be the real test of the law as now established, which in my opinion is not the test—yet I think I am warranted in saying that there is the most abundant evidence in this case to justify the conclusion that the defendant was acting under an irresistible impulse to take the life of John E. Hall, which no prudential motive could have restrained.

What is the opinion of the learned gentlemen who have testified? They have told you that, in their opinion, the defendant at the time of the perpetration of the homicide was laboring under such a degree of incipient dementia as to make it impossible for him to be conscious of the nature and quality of the act he was doing at that moment. If their testimony is reliable upon this point, it is most clear that, conceding it to be the rule that a man is not to be exonerated from responsibility unless he can not distinguish between right and wrong, in reference to the particular act, at the time when he does it, that this defendant has been brought within that rule,

and you are bound by every principle of law and humanity to return a verdict of "not guilty."

To this view of the case, however, Mr. Allen opposes the evidence of gentlemen who have known the defendant from his infancy. How have they known him? Did the Rev. Mr. Spillman, who was brought here to testify against Robert, know him? He knew him a few years ago when he was a joyous child—a promising boy, dear as existence itself to his parents; as dear as life to his loving mother and his kind, affectionate, indulgent father—he knew him as the bright, glad and promising boy, who wanted to enter into the ministry and preach the Gospel of Jesus Christ—his whole mind was inclined to the direction of piety. He was a boy at that time of great promise. But afterwards that gentleman knew nothing about him for a very considerable length of time, and especially during the period which elapsed from the time of the visitation which has brought him to the perpetration of this melancholy deed. How has he known him? He has known him as a just, upright man—as one willing at all times to do right, and who is not proved to have done any wrong from his nativity to the moment when he deprived John E. Hall of his life—a man whose character would compare well with that of the best man who lived under the wide-spreading heavens—a man who was not in the habit of taking the name of his Maker in vain, but a young man of great promise from the time he knew him down to the time when this unfortunate act was perpetrated by him. What do other gentlemen know of him? (I speak of the witnesses for the prosecution.) They have had no particular knowledge of him; they have had scarcely better knowledge of him than Sir Thomas Davenant had of the man who robbed him on the public highway; they have had scarcely better knowledge of him than the woman who appeared and testified against the two men executed upon her testimony as to their personal identity. Have any of the witnesses who have testified to his reputation for intelligence, had better acquaintance with him than they would have had with a stranger who had been here but a little time? They tell you they have not been intimate with him--he has been a coy sort of youth; some of them thought it was in consequence of a military education, derived at the military institution at West Point—that he had been educated there—and upon his return to his native town and county, he exhibited only the air of a military man, standing erect and bearing himself according to the ordinary carriage of persons educated at that institution. What is

there in all this ? It amounts to nothing. What is there in all this testimony, taking it from beginning to end ? Well may I say that it weighs not a feather.

But, gentlemen, there are other persons than those whom I have named, who it seems did know something of Sloo's character. One is a young man brought here to testify on the part of the State, who lets in a flood of light upon this dark course, and enables us to discover, what perhaps we could not have so fully discovered through the instrumentality of any other means. He tells you this young man avoided society, from "gloom and blues." At other times he was advised to court society, that he might throw off *ennui* and be enabled to enjoy life. He endeavored so to do, but was he restored—did he find anything in the social circle, or in the converse of youthful friends, to restore him to his pristine strength, and original glory and peace of mind? Has any thing occurred at any time that has enabled him to throw off the terrible ideas which have preyed upon him for six long years, and deprived him of all that is glorious and grand in human nature? He is still, notwithstanding he has taken the advice of his young friend Ridgway, laboring under this terrible visitation of Heaven ; and, gentlemen, I fear it will not please Heaven at any time to restore him to his former state of mind.

If it were possible for me to speak with as great clearness and precision, in reference to delusion, as did my friend Freeman yesterday, I might attempt the task. Mr. Freeman in his able argument to you, delivered in a clear voice and a calm manner, demonstrated the absolute absurdity of demanding the showing of the connection between the delusion and the act. In the very case in which Lord Erskine, for the first time, laid down the doctrine that a party would be " emancipated from criminal responsibility in consequence of the presence of delusion," in that very case there was no delusion except only the delusion that, by being hurried into eternity, the man would become the saviour of the human race ; his delusion was that he was called upon to make himself a sacrifice for the human family. Was there any delusion in that case in reference to the act of shooting at the King ? Did he not declare when he was arrested, after attempting the assassination of the King, that he knew it was wrong, and that he would be executed for it? believing that his execution would enable him to perform what he believed was required at his hands by the will of Heaven.

If I have succeeded, gentlemen, in satisfying your judgments

that the old test of right and wrong, and the new test of the power to discriminate between right and wrong in reference to the particular act, are fallacious, I have performed a task which I felt it exceedingly difficult to perform. If I have done so—if I have satisfied your minds—or if the gentlemen who have preceded me have satisfied your minds that the defendant perpetrated this deed under insane and irresistible impulse, then much has been done toward the performance of our whole duty. If neither of these things has been performed to your satisfaction, then, gentlemen of the jury, I enter upon another inquiry, and beg your patient listening while I shall endeavor to show that there is as much absurdity in another proposition which has been submitted to you by the prosecution.

It is said that a much higher degree, and it will be said—I suppose it has already been said by gentlemen who have preceded me —that a much higher degree of insanity is necessary to protect a a party against responsibility in a criminal case, than would be required to deprive him of the control of his property, or to set aside his contracts or his will. If the doctrine of one of the cases is to be relied upon as proving this distinction, then I willingly recognize that as good law. The doctrine of that case is, that if there "be a single word sounding to folly"—if there be a foolish word in the will—that that single word so "sounding to folly," is enough to set aside the act. If that be the law, then I am willing to concede that there is a wide difference between that rule which applies to civil cases, and that which applies to criminal cases—*I mean at common law.* But I do concede, for it is but fair that I should, that the law books do make a distinction between that sort of insanity which will set aside the civil act of a party, and that degree which will protect him against criminal responsibility, for an act done in a condition of insanity. There is a distinction taken in the common law books—there is a marked distinction in the books—for in the earlier cases it was laid down, that there must be complete insanity to protect a party against criminal responsibility for any act done under the influence of mental disease ; but it never was, even in the most barbarous ages of the common law, laid down that absolute and total loss of memory and understanding was necessary to be proved, to set aside the contract of a party made in that condition, or to deprive him of the control of his estate *de lunatico inquirendo*, or by writ to enquire of the lunacy of a person against whom it was executed. Then I think that I may with propriety say, in the presence and hearing of this

court, and to you, gentlemen, that according to the old law there was a marked distinction between criminal responsibility for acts done under the influence of insane delusion or impulse, and those which avoided the contract of a party or invalidated his will, or deprived him under a commission of lunacy of the control of his property. It could not have been otherwise than I have stated it, because at no time was the common law so barbarous in its judgment and determination—at no time, even from the time I may say of the conquest, to the period when Lord Hale laid down his dogma—at no time was the common law so barbarous as to say that a contract could not be set aside, unless the party making it was totally deprived of his memory and understanding.

It is then perfectly consistent with the general principles of the common law, in reference to the state of the mind of the party, that a distinction should be taken, and that it should be maintained; it is perfectly consistent with every principle of that old crude code, which was established under the rule of tyranny and oppression, no way creditable to the head or heart of any age; that barbarous code, I repeat, never discriminated so nicely as to say that a party could not be deprived of the control of his property because he had not lost his understanding and memory totally.

If Lord Hale could rise from the grave—if his shade could preside at this trial—if he has had converse with the spirits of the other world—if he has witnessed there the blood-stained judge and the blood-stained juror—and, worse than all, the blood-stained witness, who have hurled into eternity thousands of men under a mistaken view of the law, he would tell you, gentlemen, that he would gladly recall every word and every act of his, "sounding to folly." He would tell you that the ghost of Billingham is wandering upon the shores of the gloomy Styx, to which he was hurried by Chief Justice Mansfield and Sir Vicary Gibbs; he would tell you that that man who was insane, and was tried and denied the privilege of having counsel to be heard for him at the bar, who stood up for himself, and having been deprived of his papers and not being allowed time to arrange them, and having to vindicate himself against the prejudices of the judge and the power of the King, and the abilities of the Attorney General, he would tell you that that ghost told him that this old rule was not the rule of reason, but that it was a bloody and inhuman rule.

The question presented this morning by Mr. Allen to you, was adjudicated upon by Chief Justice Shaw in Rogers' case. I mean

whether you are to be satisfied beyond a reasonable doubt of the insanity of the defendant. He had told you (and read from a book) that it is not enough to warrant you in returning a verdict of "not guilty" in this case, if you were not satisfied beyond a doubt that the defendant was insane. I read from *Rogers' Trial*, p. 281:

> The Chief Justice having concluded his charge at half-past eleven o'clock, the jury retired, and at half-past three P. M. came in to ask further instructions upon the two questions—"Must the jury be satisfied beyond a doubt of the insanity of the prisoner, to entitle him to an acquittal?" "And what degree of insanity will amount to a justification of the offence?"
>
> On the first point, the Chief Justice repeated his foregoing remarks upon the same head; and added, that "if the preponderance of the evidence were in favor of his insanity—if its bearing and leaning, as a whole, inclined that way—they would be authorized to find him insane."
>
> On the second point, he added nothing material to the statement of law already made.
>
> The jury again retired, and at half past four brought in a verdict of "NOT GUILTY BY REASON OF INSANITY."

Now you perceive, gentlemen of the jury, that two questions are made here. The first is, should the jury be satisfied beyond a doubt of the insanity of the prisoner? I have no doubt, gentlemen, but that that argument had been urged by the prosecution before the jury; I have no doubt that had it been contended by the gentlemen who prosecuted in that case, that to exonerate the prisoner from responsibility for the crime that he had committed, it should be shown that he was insane beyond a doubt. The jury came back for instructions as to this point, and what does the court say? On the first point the Chief Justice repeated his instructions; and then he directly charges that if there be a "leaning" towards insanity, the jury should acquit.

What sort of rule have the learned gentlemen laid down for your guidance? What sort of rule did the enlightened judge who presided at that fearful trial lay down? Was it such a rule as has been stated by the gentleman in reading this case? It was the very reverse of it; it was a totally different rule. If the evidence *inclined* their minds in the direction of insanity, he charged them they should find in favor of his insanity, and acquit him on that finding. How liable are we in reading law books to misunderstand the just meaning of words. A great difficulty in the progress of human knowledge is found in the imperfection of language, in its inadequacy to convey ideas clearly from man to man. Another difficulty is the misapprehension of the meaning of words

when employed to convey but one idea. Has this charge been read to you in this way by any gentleman who has preceded me on the part of the prosecution—has it been read in the same precise way by any one who has preceded me in the defence? It has been insisted here that the preponderance of evidence in favor of the insanity of defendant would not warrant you to return a verdict of "not guilty." I tell you in the language of Chief Justice Shaw, (and I shall demand that the same language be employed by this court,) if the whole of the testimony inclines in that direction, you are warranted by the solemn oath you have taken—you are impelled by every moral obligation—you are bound by your oaths to God and to man, to return a verdict of "not guilty" upon the inclining of the testimony.

Who is the man in whose favor Chief Justice Shaw thus instructed? Was he a better man than Robert C. Sloo? Sloo has been accused of no crime prior to this unfortunate act; he was no guilty thing that he should shrink from the gaze of men or be branded with the disapprobation of his countrymen. Sloo had perpetrated no crime for the punishment of which he has been deprived of his liberty; but this man in whose favor this instruction was given, was an inmate of the penitentiary at the time of the act; he was there as a criminal convicted of the crime of larceny. I demand at least as much for my client, a native of the county of Gallatin, a gentleman—I demand for him at the hands of this court, as much clemency, as much leniency, in the statement of the law, as that thief received at the hands of Chief Justice Shaw upon his trial for the murder of Mr. Lincoln, the superintendent of the Penitentiary of the State of Massachusetts. I ask for him no more than was done in favor of that degraded man. I demand for him at your hands, no more than was demanded for the defendant in that case at the hands of the twelve honest and humane gentlemen who tried him; but I do ask for Sloo just the same measure of justice, and just the same measure of law from the court, that the thief received at the hands of him who sat in judgment at that trial.

Are we to be told at this time, that the evidence must satisfy you beyond a reasonable doubt of the insanity of Sloo at the time of the commission of this act, to exonerate him from criminal responsibility? If we are so told, I say it is not law, and ought to be scouted from this court. Are we to be told—will his honor tell you, presiding as he does in this case of life and death, with a heart—I have some reason to know—will he pro-

nounce to you from that awful tribunal upon which he sits, that the law requires at our hands evidence to satisfy you beyond a reasonable doubt that Sloo was insane at the time of the perpetration of this deed, when Chief Justice Shaw, at the trial of a man certainly not better than Sloo, said that a leaning in that direction would warrant a finding of "not guilty"? That comes up, sirs, in some slight degree to the principle I have laid down in this discussion. It comes up in some sort to the spirit of the notions which I have expressed in reference to the degree of insanity which is necessary to be shown to exonerate the defendant. What is it? It is but a leaning in the direction of insanity that warrants an acquittal—an inclination of the mind of the jury under the instructions of the court in favor of the validity of the plea, and the existence of insanity, alleged in exoneration of defendant, which warrant a jury to return a verdict of not guilty. Does that mean that there should be conclusive proof of its existence? I declare that it is my solemn conviction that in every case of modern date, if rightly studied and understood, the principles which I have endeavored to enforce will be found to be recognized.

All the cases which I have cited go upon this principle—that if there be insanity, that insanity exonerates from criminal responsibility, sets the defendant at liberty, and may return him to the bosom of his family, or send him to the hospital for the cure of his unsoundness. These cases have been mis-read; Wharton has been mis-read—misunderstood. This case of Rogers, taken in its whole scope, maintains the doctrine which I have contended for as being fairly deducible from the criminal code of this State. What is meant when this language is used, if it be not to say, "If there be insanity, the party shall be acquitted?" He means, that if twelve men have their minds inclining to the opinion that he was insane, they must acquit him of the charge. He means nothing but that; and there is no other fair construction that can be placed upon this language.

There is another question, and I touch upon this with a view to do what, in my opinion, is my duty to enforce the views I entertain.

Now, how are we to understand this charge? The key to the understanding of it is to be found in what he subsequently says upon the question of evidence to establish insanity. A great many of these words have not been used with that degree of nicety which is desirable in all judicial decisions and determinations; but notwithstanding, when we go to the other part of that charge, I find

the judge telling the jury that if their minds are inclined to the opinion (what opinion?) that the defendant was laboring under melancholia accompanied with delusion, they must acquit him. I ask the court to tell me if this is not a fair construction of this charge; I ask you, gentlemen of the jury, to say whether or not this is not a fair and just construction of this charge of Chief Justice Shaw. What could he have meant when the question before him was simply, whether the party was laboring under melancholia accompanied with delusion; what could he have meant when he told the jury that if they were satisfied that the evidence inclined or leaned in the direction of insanity (what sort—bare melancholy, accompanied with delusion?) they ought to acquit the defendant?

Then, gentlemen of the jury, we have it in proof, that not only has this young man been laboring under melancholy, from his own intimate friend, young Mr. Ridgway, but we have the fact that that melancholy was induced by the most terrible affliction; and the conclusion of physicians—men of science—upon these facts is, that he was absolutely insane—that he was in a state of incipient dementia. And now let me tell you what I understand dementia to be.

Dementia, as I understand it, is one of the classes or forms of insanity as found in the books. Dementia, in its strict and literal sense, signifies deprivation of mind; coming from two Latin words, *de* (out of) and *mens* (mind). Complete dementia is when the understanding and memory are totally dethroned; not merely when madness sits down with reason upon her throne, and, in the words of Lord Erskine, "holds her trembling there." When there is a total deprivation of understanding, then, and not till then, there is complete dementia. What sort of dementia have we established by the testimony of the learned gentlemen who have testified on our part in this case? Mr. Allen thinks that the testimony of Dr. McFarland is entitled to no weight; he that has seen maniacs by thousands; he that has gone, so intent was he upon gathering information to guide and direct him in the performance of his duty—he that has gone to the cell of Tasso. He has travelled inthe hospitals of Europe, and he has seen thousands of men laboring under this disease. He has gone to Italy and viewed the ruins of that empire. If he has derived no benefit from travel and nine years' presidency over lunatic asylums of this country; if he has made no progress, I demand to know whose opinion would weigh with the gentleman in coming to a conclusion upon this question? Certainly not the

opinion of Dr. Condon, for he had the candor to say—while at the same time there was a manifest disposition on his part to set up his judgment against the judgment of other gentlemen—he had the candor to declare that he had never read a book upon metaphysics in the whole course of his life, much less upon insanity. I asked him to tell me if he had ever read Locke—he had not even read that through; if he had read Esquirol or Ray—he said he had not read either of these; I asked him to tell me what books on metaphysics he had read—he said he had read none—none of the American standards, nor Locke, Stewart, or Reid. Then what foundation have they to rest his opinion upon? He told me he had read no work upon the disease with which the defendant is afflicted; that he had read no work, except generally in works on the practice of medicine, on the disease of the mind. He did say something about his reading Dr. Rush.

[It being now 12 o'clock, M., the Court adjourned till 1 o'clock, P. M., when Mr. Davis resumed as follows]:

I have been endeavoring, gentlemen, to enforce the view with which I set out; I have been endeavoring to make plain the original proposition with which I started; I have been endeavoring, in my way, to convince you that there is no other enlightened and just rule than the rule upon which I was insisting. I trusted that I had, in some sort, performed that part of my duty. I trusted that I had laid before you, and before this court, cases so completely illustrative of the rule upon which I insisted, that there would scarcely be a doubt in the mind of any man in regard to the correctness of the position which I assume.

I felt, gentlemen of the jury, that the Rogers' case, rightly understood and correctly presented, was in keeping with those views. I felt, and so expressed myself, that the chief difficulties in the way of demonstrating the correctness of my position were to be found in the adjudications of the earlier ages, and in the strict adherence, by the common law judges, to those adjudications. To my mind, there is no clearer proposition, than that proof of the presence of insanity is enough, and that a judge in the exercise of his office, prompted by considerations of humanity and acting in obedience to a just and christian spirit, would never do otherwise than give the instructions which were given by Chief Justice Shaw in the case of Rogers; and whenever that character of instruction is given, that moment all the difficulty in the way of the law in

reference to insanity is removed—the way is clear, and lighted up on every hand, through which we may pass without danger.

I have said all that I proposed to myself to say in reference to the *mere law* of this case. My whole endeavor has been to perform that duty in such a way, and under the influence of such a spirit, as should be unexceptionable in the opinion of all men. That differences of opinion should exist between gentlemen on the same proposition is not at all wonderful; that differences of opinion should exist among judges is equally to be expected; that differences of opinion should exist among men in reference to every topic of discussion, is only what human experience makes at least probable.

But another topic has been addressed to you—a topic apart from the mere law of this case—a topic which appeals to your experience. You have been told that Robert C. Sloo was a young man of at least *mediocre* intelligence; indeed, that he was quite above the youths of Shawneetown of his own age and condition. From that statement you are called upon to infer that there was no insanity in him at the time of the perpetration of the deed which has called you together, and which has detained you from your families these twenty-three days. If, gentlemen, the test of intelligence was capable of settling this difficulty—if, through its instrumentality, you should arrive at a just conclusion—your labor would be ended with less difficulty—would be plainer, and more easily performed. But that is not the test; that test is too fallible; that test is too little supported by experience or by learning. The test is not in accordance with the enlightened adjudications of the time in which we live; that test never was recognized as being entitled to serious consideration in a case of this kind. I read to you, gentlemen of the jury, in support of the views which I have presented upon this topic of discussion, the case of Bellingham before Chief Justice Mansfield, in 1811, for the assassination of the Chancellor of the Exchequer of England, the Hon. Spencer Perceval. I have told you already that, according to the forms of English procedure and English law, in the trial of criminal cases, the defendant had no right to be heard by counsel, except it be in a case for treason. Here is the case of Bellingham:

On Monday, May the 11th, as Mr. Perceval was entering the lobby of the House of Commons, at a quarter past five in the evening, he was shot with a pistol fired at him as he entered the door. He was in company with Lord F. Osborne, and immediately on receiving the ball, which entered the left breast, he staggered, and fell at the feet of Mr. W. Smith, who was standing near the

second pillar. The only words he uttered were, "Oh! I am murdered!" and the latter was inarticulate, the sound dying between his lips. He was instantly taken up by Mr. Smith, who did not recognize him until he had examined his face. The report of the pistol immediately drew great numbers to the spot, who assisted Mr. Smith in conveying the body of Mr. Perceval into the Speaker's apartments; but all signs of his life had departed.

Mr. Perceval's body was placed upon a bed when Mr. Lynn, of Great George street, who had been sent for, arrived, but too late even to witness the last symptoms of expiring existence. He found that the ball, which was of an unusually large size, had penetrated the heart near its centre, and had passed completely through it. From thence the body was removed to the Speaker's drawing-room by Mr. Lynn and several members, where it was laid on a sopha.

The horror and dismay occasioned by the assassination of Mr. Perceval, prevented any attention from being paid to the perpetrator, and it was not until he was raised from the floor, that a person exclaimed, "Where is the rascal that fired?" when a person of the name of Bellingham, who had been unobserved, stepped up to him, and coolly replied, "I am the unfortunate man." He did not make any attempt to escape, though he had thrown away the pistol by which he had perpetrated the deed, but resigned himself quietly into the hands of some of the by-standers. They placed him upon a bench near the fire-place, where they detained him; the doors were closed, and the egress of all persons prevented. When the assassin was interrogated as to his motive for this dreadful act, he replied, "My name is Bellingham; it is a private injury; I know what I have done; *it was a denial of justice on the part of government.*"

On Thursday, the grand jury, at Hick's Hall, found a true bill against Bellingham, for the wilful murder of the right honorable Spencer Perceval. It appeared that, with respect to the manner in which Bellingham passed the previous part of the day on which he committed the murder, he went with a lady to the European Museum, where he was detained till past four o'clock. He parted from her at the extremity of Sidney's Alley, and went down immediately to the House of Commons, without having dined, and with his pistols loaded. He was so anxious not to be disappointed by the failure of the weapon, that, after he had bought his pistols, for which he gave four guineas, he went to Primrose Hill to try how they would go off, and, when he had ascertained their efficacy, loaded them for his purpose.

His trial came on at the Old Bailey, Friday, May 15th. At half past ten, the judges, Lord Chief Justice Mansfield, Baron Graham, and Sir Nash Grose, entered the court. The prisoner was immediately ordered to the bar. He advanced slowly, with the utmost composure of countenance, and bowed to the court. He was dressed in a brown coat, striped waistcoat, and dark small clothes. The prisoner pleaded not guilty, and the facts, already stated, having been proved by several respectable witnesses, he was called upon for his defence?

The prisoner asked whether his counsel had nothing to urge in his defence?

Mr. Alley informed him that his counsel were not entitled to speak.

The prisoner said, that the documents and papers necessary to his defence had been taken out of his pocket, and had not since been restored to him. The papers were then handed to the prisoner, who proceeded to arrange and examine them. The prisoner, who had been sitting till now, rose, and bowing respectfully to the court and jury, went into his defence in a firm tone of voice, and without any appearance of embarrassment or feeling for the awful situation in which he was placed. He spoke nearly to the following effect: "I feel great obligation to the Attorney-General for the objection which he has made to the plea of insanity. I think it is far more fortunate that such a plea as that should

have been unfounded, than it should have existed in fact. I am obliged to my counsel, however, for having thus endeavored to consult my interest, as I am convinced the attempt has arisen from the kindest motives. That I am, or have been insane, is a circumstance of which I am not apprized, except in the single instance of my having been confined in Russia—how far that may be considered as affecting my present situation, it is not for me to determine. This is the first time I have ever spoken in public in *this way*. I feel my own incompetency, but I trust you will attend to the substance, rather than to the manner, of my investigating the truth of an affair which has occasioned my presence at this bar. I beg to assure you, that the crime which I have committed has arisen from compulsion rather than from any hostility to the man whom it has been my fate to destroy. Considering the amiable character, and the universally admitted virtues of Mr. Perceval, I feel, if I could murder him in a cool and unjustifiable manner, I should not deserve to live another moment in this world. Conscious, however, that I shall be able to justify every thing which I have done, I feel some degree of confidence in meeting the storm which assails me, and shall now proceed to unfold a catalogue of circumstances, which, while they harrow up my own soul, will, I am sure, tend to the extenuation of my conduct in this honorable court. This, as has already been candidly stated by the Attorney-General, is the first instance in which any, the slightest imputation has been cast upon my moral character. Until this fatal catastrophe, which no one can more heartily regret than I do, not excepting even the family of Mr. Perceval himself, I have stood alike pure in the minds of those who have known me, and in the judgment of my own heart. I hope I see this affair in the true light. For eight years, gentlemen of the jury, have I been exposed to all the miseries which it is possible for human nature to endure. Driven almost to despair, I sought for redress in vain. For this affair, I had the *carte blanche* of government, as I will prove by the most incontestable evidence, namely, the writing of the Secretary of State himself. I come before you under peculiar disadvantages. Many of my most material papers are now at Liverpool, for which I have written, but have been called upon my trial before it was possible to obtain an answer to my letter. Without witnesses, therefore, and in the absence of many papers necessary to my justification, I am sure you will admit I have just grounds for claiming some indulgence. I must state, that after my return from my voyage to Archangel, I transmitted to his royal highness, the Prince Regent, through my solicitor, Mr. Windle, a petition; and in consequence of receiving no reply, I came to London, to see the result. Surprised at the delay, and conceiving that the interests of my country were at stake, I considered this step as essential, as well for the assertion of my own right, as for the vindication of the national honor. I waited upon Col. McMahon, who stated that my petition had been received, but, owing to some accident, had been mislaid. Under these circumstances, I drew out another account of the particulars of the Russian affair, and this may be considered as the commencement of that train of events which led to the afflicting and unhappy fate of Mr. Perceval. This petition I shall now beg leave to read." (*Here the prisoner read a long petition.*)

In the course of narrating these hardships, he took occasion to explain several points, and adverted with great feeling to the unhappy situation in which he was placed, from the circumstance of his having been but lately married to his wife, then about twenty years of age, with an infant at her breast, and who had been waiting for him at St. Petersburgh, in order that she might accompany him to England—a prey to all those anxieties which the unexpected and cruel incarceration of her husband, without any just grounds, was calculated to ex-

cite. (*In saying this, the prisoner seemed much affected.*) He also described his feelings at a subsequent period, when his wife, from an anxiety to reach her native country (England) when in a state of pregnancy, and looking to the improbability of his liberation, was obliged to quit St. Petersburgh unprotected, and undertake the voyage at the peril of her life, while Lord L. Gower and Sir S. Shairpe suffered him to remain in a situation worse than death. "My God! my God!" he exclaimed, "what heart could bear such excruciating tortures, without bursting with indignation at conduct so diametrically opposite to justice and to humanity. I appeal to you, gentlemen of the jury, as men—I appeal to you as Christians—whether, under such circumstances of persecution, it was possible for me to regard the actions of the Ambassador and Consul of my own country with any other feelings but those of detestation and horror. In using language thus strong, I feel that I commit an error; yet does my heart tell me, that men who lent themselves thus to bolster up the basest acts of persecution, there are no observations, however strong, which the strict justice of the case would not excuse my using towards them. Had I been so fortunate as to have met Lord Leveson Gower, instead of that truly amiable and highly lamented individual, Mr. Perceval, he is the man who should have received the ball!!!"

After reading several other papers, he thus proceeded:—"I will now only mention a few observations by way of defence. You have before you all the particulars of this melancholy transaction. Believe me, gentlemen, the rashness of which I have been guilty has not been dictated by any personal animosity to Mr. Perceval, rather than injure whom, from private or malicious motives, I would suffer my limbs to be cut from my body. (*Here the prisoner seemed again much agitated.*)

"If, whenever I am called before the tribunal of God, I can appear with as clear a conscience as I now possess, in regard to the alleged charge of the willful murder of the unfortunate gentleman, the investigation of whose death has occupied your attention, it would be happy for me, as essentially securing to me eternal salvation,—but that is impossible. That my arm has been the means of his melancholy and lamented exit, I am ready to allow. But to constitute murder, it must clearly and absolutely be proved to have arisen from *malice prepense, and with a malicious design*, as I have no doubt the learned judge will shortly lay down, in explaining the law on the subject. If such is the case, I am guilty; if not, I look forward with confidence to your acquittal.

"That the contrary is the case, has been most clearly and irrefragably proved: no doubt can rest upon your minds, as my uniform and undeviating object has been, an endeavor to obtain justice, according to law, for a series of the most long-continued and unmerited sufferings that were ever submitted to a court of law, without having been guilty of any other crime than an appeal for redress for a most flagrant injury offered to my sovereign and my country, wherein my liberty and my property have fallen a sacrifice for the continued period of eight years, to the total ruin of myself and family (with authenticated documents of the truth of the allegation), merely because it was Mr. Grant's pleasure that justice should not be granted, sheltering himself with the idea of there being no alternative remaining, as my petition to Parliament for redress could not be brought forward (as having a pecuniary tendency) without the sanction of his majesty's ministers, and that he was determined to oppose, by trampling both on law and right.

"Gentlemen, where a man has so strong and serious a criminal case to bring forward as mine has been, the nature of which was purely national, it is the bounden duty of government to attend to it, for justice is a matter of right, and

not of favor. And, when a minister is so unprincipled and presumptuous, at any time, but especially in a case of such urgent necessity, as to set himself above both the sovereign and the laws, as has been the case with Mr. Perceval, he must do it at his personal risk; for, by the law, he can not be protected.

"Gentlemen, if this is not fact, the mere will of a minister would be law; it would be this thing to-day, and the other to-morrow, as either interest or caprice might dictate. What would become of our liberties? where would be the purity and the impartiality of the justice we so much boast of? To government's non-attendance to the dictates of justice is solely to be attributed the melancholy catastrophe of the unfortunate gentleman, as any malicious intention to his injury was the most remote from my heart. Justice, and justice only, was my object, which government uniformly objected to grant; and the distress it reduced me to, drove me to despair. In consequence, and purely for the purpose of having the singular affair legally investigated, I gave notice at the public office, Bow street, requesting the magistrates to acquaint his majesty's ministers, that if they persisted in refusing justice, or even to permit me to bring my just petition into Parliament for redress, I should be under *the imperious necessity of executing justice myself*, solely for the purpose of ascertaining, through a criminal court, whether his majesty's ministers have the power to refuse justice to a well authenticated and irrefutable act of oppression, committed by the consul and ambassador abroad, whereby my sovereign's and country's honor were materially tarnished by my person endeavoring to be made the stalking-horse of justification to one of the greatest insults that could be offered to the crown.

"But in order to avoid so reluctant and abhorrent an alternative, I have hoped to be allowed to bring my petition to the House of Commons, or that they would do what was right and proper themselves.

"On my return home from Russia, I brought most serious charges to the privy council, both against Sir Stephen Shairpe and Lord G. L. Gower, when the affair was determined to be purely national, and, consequently, it was the duty of his majesty's ministers to arraign it, by acting on the resolution of the council Suppose, for instance, the charge I brought could have been proved to be erroneous, should I not have been called to severe account for my conduct; but, being true, ought I not to have been redressed?

"After the notice from the police to the government, Mr. Ryder, conscious of the truth and cruelty of the case, transmitted the affair to the treasury, referring me there for a final result. After a delay of some weeks, the treasury came to the resolution of sending the affair back to the secretary of state's office; at the same time, I was told by a Mr. Hill, he thought it would be useless my making further application to government, and that I was at full liberty to take such measures as I thought proper for redress.

"Mr. Beckett, the under-secretary of state, confirmed the same, adding, that Mr. Perceval had been consulted, and could not allow any petition to come forward. Thus, by a direct refusal of justice, with a *carte blanche* to act in whatever manner I thought proper, were the sole causes of the fatal catastrophe; and they have now to reflect on their own impure conduct for what has happened.

"It is a melancholy fact, that the warping of justice, including all the various ramifications in which it operates, occasions more misery in the world, in a moral sense, than all the acts of God in a physical one, with which he punishes mankind for their transgressions; a confirmation of which, the single but strong instance before you is one remarkable proof.

"If a poor unfortunate man stops another upon the highway, and robs him of

but a few shillings, he may be called upon to forfeit his life. But I have been robbed of my liberty for years, ill-treated beyond precedent, torn from my wife and family, bereaved of all my property to make good the consequences of such irregularities; deprived and bereaved of everything that makes life valuable, and then called upon to forfeit it, because Mr. Perceval has been pleased to patronize iniquity that ought to have been punished, for the sake of a vote or two in the House of Commons, with, perhaps, a similar good turn elsewhere.

"Is there, gentlemen, any comparison between the enormity of these two offenders? No more than a mite to a mountain. Yet the one is carried to the gallows, while the other stalks in security, fancying himself beyond the reach of law or justice: the most honest man suffers, while the other goes forward in triumph to new and more extended enormities.

"We have had a recent and striking instance of some unfortunate men, who have been called upon to pay their lives as the forfeit of their allegiance, in endeavoring to mitigate the rigors of a prison. (Alluding to some recent trials for high treason, at Horsemonger-lane.) But, gentlemen, where is the proportion between the crimes for which they suffered, and what government has been guilty of in withholding its protection from me? Even in a crown case, after years of suffering, I have been called upon to sacrifice all my property, and the welfare of my family, to bolster up the iniquities of the crown, and then am prosecuted for my life because I have taken the only possible alternative to bring the affair to a public investigation, for the purpose of being enabled to return to the bosom of my family with some degree of comfort and honor. Every man within the sound of my voice must feel for my situation; but by you, gentlemen of the jury, it must be felt in a peculiar degree, who are husbands and fathers, and who can fancy yourselves in my situation. I trust that this serious lesson will operate ss a warning to all future ministers, and lead them to do the thing that is right, as an unerring rule of conduct; for, if the superior classes were more correct in their proceedings, the extensive ramifications of evil would, in a great measure, be hemmed up; and a notable proof of the fact is, that this court would never have been troubled with the case now before it, had their conduct been guided by these principles.

"I have now occupied the attention of the court for a period much longer than I intended; yet I trust they will consider the awfulness of my situation to be a sufficient ground for a trespass, which, under other circumstances, would be inexcusable. Sooner than suffer what I have suffered for the last eight years, however, I should consider five hundred deaths, if it were possible for human nature to endure them, a fate far more preferable. Lost so long to all the endearments of my family, bereaved of all the blessings of life, and deprived of its greatest sweet, liberty, as the weary traveller who has long been pelted by the pitiless storm welcomes the much desired inn, I shall receive death as the relief of all my sorrows. I shall not occupy your attention longer; but relying on the justice of God, and submitting myself to the dictates of your conscience, I submit to the *fiat* of my fate, firmly anticipating an acquittal from a charge so abhorrent to every feeling of my soul."

Here the prisoner bowed, and his counsel immediately proceeded to call witnesses, in order to prove a state of insanity.

The Lord Chief Justice, in summing up the evidence, pointed out those species of insanity which would excuse murder, or any other crime; but a person capable of distinguishing right from wrong could not be excused.

The jury, after a quarter of an hour, brought in a verdict of *Guilty*.

The impressive and awful sentence of the law was heard by him without any apparent emotion.

On Monday morning, May 18th, a few minutes before eight, this wretched man appeared on the scaffold, perfectly resigned to his fate, and, in about two minutes, was launched into eternity.

Will my friend, Mr. Robinson, or my other friend, Mr. Allen, and still my other friend, Mr. Logan, tell me that there are many men in their sane moments that can make a better speech than this is? What character of test of insanity is that which these gentlemen ask you to establish? If there can be found anywhere in this country, or in England, or in any country, any thing which warrants the conclusion to which the minds of the prosecution in this case have been conducted, then I confess my total ignorance of its existence; I know not in what school of philosophy it is found. For my single self, I have not had the good or bad fortune to be educated in such a school. I know nothing of such processes of reasoning, and I repudiate them. Here the unfortunate man speaks of the well known principles of the law; here he adverts, in clear and distinct language, to the well known tests of responsibility, or rather, to the well known principle in reference to guilt, when he says, that "before you can convict, it must clearly and absolutely be proved to have arisen from malice prepense and with a malicious design." This is the very doctrine, the very language which a judge or lawyer would hold; this is the very character of speech which any sane man would make upon a similar occasion. A man can only be held responsible when he acts with malice aforethought, or, as he expresses it, "with malice prepense and with a malicious design."

Bellingham was hanged—convicted under the instruction of Chief Justice Mansfield, laying down a principle which was an absurdity, that to exonerate himself he must have been in such a condition of mind as to be totally unable to distinguish between right and wrong --notwithstanding his speech—after being confined in Russia as a lunatic, and as a lunatic having killed Mr. Perceval, because he believed, when he had killed him, he could bring before the country all the abuses that he complained of, and have them redressed. He had bent himself before the government for years, and, after having done all that he thought possible for him to do, he resolved that he would kill the Chancellor of the Exchequer, and in that way bring his case before his country, and have it adjudicated upon in such a manner as to be reimbursed the losses which he had sustained in the service of his country in Russia.

If that jury could have known his previous history, he would not

have been convicted; if that jury could have witnessed the sublime spectacle which has been exhibited in the progress of this trial; if they could have beheld the law as it has been here exhibited; if they could have seen the trial delayed from time to time, and finally allowing to the defendant the privilege of challenging, if he chose to do so, twenty men; if these things could have been brought to the aid of that poor individual, circumstanced as he was, he would have been relieved from the penalty of the law—he would not have been convicted. Only five days were allowed to elapse between the commission of the offence and the period of his conviction. Only five days elapsed from the time when he took the life of the Hon. Spencer Perceval and the time when the judge, with his black cap on, pronounced the sentence of death upon him. What a farce of a trial! How deplorable—how pitiable was his condition!

But, gentlemen, my chief object in reading to you this case, is to evince to you, beyond successful controversy, that a man may be in the possession of almost all his faculties, and still commit a crime for which he is not, or ought not to be responsible. I read to you this case, chiefly with the view to meet that strange course of argument adopted by the prosecution; I read this case to you for the purpose of satisfying your judgment that this is no reliable test—that it is not only not philosophical, but that it is cruel and inhuman, to say that the possession of high intelligence is conclusive evidence of sanity. It is a thing too absurd to be dwelt upon. What do the books tell you, gentlemen, and what have the learned gentlemen, who have come here under process of law, told you as to the possession of intelligence by a man laboring under insanity? They tell you, in many instances they evince an extraordinary degree of subtlety and ingenuity in the conduct of arguments—in the laying of plans, and in their execution. You have heard from Mr. Swett the case of the District Attorney of the United States for the District of Missouri. That man who was so insane as to cut off his own nose, supposing that, like the hair of his head, it would grow again; that man who, in the city of New York, was so fully in the possession of his faculties as to know the law in reference to assault and battery—who, to guard himself against the effects of collisions in the streets, took a witness, and took his full half of the way, and when he came in collision with a vehicle, got into a difficulty, and then proved by his witness that he had given at least half of the road, and was guilty of no wrong, and that the other man struck him first with a whip—he affords another com-

plete illustration of the absurdity of the position insisted upon by Mr. Allen.

There are so many cases which go to illustrate this view of the subject, that it would be painful for me to read them—perhaps it would be a loss of time.

Mr. Robinson has told you, and Mr. Allen has told you, and my learned friend, Mr. Logan, will also tell you, that the papers which we have read in evidence to you are are not entitled to your consideration, because they do not afford justification for the act done. They were not offered with a view to justification—they were offered with another and a different view; they were offered for the purpose of enabling us to bring before you certain principles laid down in the books, or certain doctrines taught by the books, in reference to the operation of defamation on the sane mind. Many a man has lost his reason under the influence of defamation. Many a man has been deprived of his understanding by the mere operation of defamation. Many a man, writhing under the lash of slander, has committed suicide, or has been deprived of his reason, so as to warrant his incarceration in a lunatic asylum for the balance of his days. I read from Rush to show you the reason, in part, of the introduction of these papers (p. 38): "The bedlams of Europe exhibit many cases of madness from public and private defamation, and history informs us of ministers of state and generals of armies having often languished away their lives in a state of partial derangement, in consequence of being unjustly dismissed by their sovereigns."

Did you hear these papers read? I have told you, that if I possessed the power that I would gladly restore John E. Hall to his wife and to his children. I told you but the feelings of my heart when I have so spoken to you; but, gentlemen, although I entertain these feelings—although nothing rankles in my bosom toward John E. Hall—although he never offended me, and I have no cause for offending his widow and his orphans, you will pardon me, if necessity compels me to speak somewhat severely of these articles. But I am here to perform a sacred duty—I am here in the execution of a most solemn office; not so solemn as that you are performing, yet such an office as no man with a head or heart could enter upon the duties of without feeling a degree of trepidation and diffidence.

I ask, what influence may it be supposed that these articles exerted upon the mind of Sloo? How is it likely he was affected by

them? Suppose him to be in full possession of all his faculties—suppose him to be only such as we all are, perishable, mortal, dying bodies; suppose this, and then ask yourselves, what influence these publications were likely to exert over his mind, though he were sane. If the bedlams of Europe have been filled, or if they only furnish some instances of insane persons, made so by defamation, may we not suppose that in this country this might have some influence upon the mind of a gentleman of birth?

What were these words? I beseech you to pardon me if any allusion of mine to the memory of John E. Hall may seem to be unkind; I repeat, towards him, his widow and children, I entertain no unkindness. What was the language of those articles—what character of articles were those that have been read to you? Robert C. Sloo is himself branded as a coward and deserter—he is himself spoken of in terms of derision and disgrace—he is described as an upstart coming from West Point—he is said to be a man, who, having no sense of his obligation to his country, no sense of honor, volunteering in a certain troop, deserted from cowardice. What more, gentlemen? Not content with speaking of Robert in the manner in which I have mentioned, the writer speaks of his father as a "perjured scoundrel," a felon; speaks of him in every form in which he can apply the epithets of dishonor and derision; speaks of the family of defendant—the female portion of it. I once had a father myself—that father sleeps with his fathers; I once had a mother myself, who has been gathered to her final home. Oh, God! oh, God! if, while that father lived, any man had assailed him as Col. Sloo was assailed, what would have staid my arm? what power save the power of a rational brain could have arrested it?—what, but prayer to God could have armed me against it?—what, but the descent of an angel from Heaven to interpose between me and my vengeance, could have staid my arm? And suppose that I were placed in the situation of this unfortunate youth; suppose my mother—that mother whose kindness nursed and protected me in my infancy, had been assailed in such a way—before God, I would have rushed to my vengeance, and would have swept from this world any such man, even in my sane moments. I know no law, human or divine. I will not say divine, because Jesus Christ, while on earth, taught us, that when we were smitten on one side, we should turn the other cheek, and receive a blow on that also; but who is there upon this earth, that can imitate successfully the example of the

Saviour of mankind? Who is there that can act fully in accordance with the teachings of the very Christ? No living man can do it.

Then there are the sisters of the defendant. They are spoken of too. How are they spoken of? I leave you to determine. I shall not address myself to the consideration of the language employed in reference to the girls, but I will simply say, Mr. Grayson, once for all, that if there be one sacred tie—one tie that should be cemented by every consideration of duty and obligation—it is that tie which binds the brother to his sister; it is that tie which has a right to command the conduct of the brother in the vindication of the reputation and standing of a sister. If there be any thing on earth which may claim in some sort a kindred with Heaven, it is that quality in the human heart which prompts a young man to rush to the rescue of the fame of his sister from the cormorant devouring of a slanderer.

A great deal, gentlemen of the jury, has been said in reference to the means which produce insanity; they are as various as are the likenesses of men; they are as completely separated by lines of demarkation as you can separate any solid substance by making a line upon it by the use of a chisel. Another instance is here; I will read from Dr. Rush. His honor will recognize in the name of Dr. Rush a patriot and a scholar; and every gentleman will recognize the fact, that Dr. Rush was not only the pride of his profession, but that he was an ornament to his country. He says (p. 40):

A clergyman in Maryland became insane in consequence of having permitted some typographical errors to escape in a sermon which he published upon the death of Gen. Washington.

Intellectual derangement [continues the same author, p. 40] is more common from mental than corporeal causes. Of 113 patients in the Bicetre Hospital in France, at one time, Mr. Pinel tells us, 34 were from domestic misfortunes; 24 from disappointments in love; 30 from the distressing events of the French revolution, and 25 from what he calls fanaticism, making in all the original number. I have taken pains to ascertain the proportion of mental and corporeal causes which have operated in producing madness in the Pennsylvania Hospital, but I am sorry to add, my success in this inquiry was less satisfactory than I wished. Its causes were concealed in some instances, and forgotten in others.

Dr. Roe testified before you in such a manner as to entitle his evidence to the highest consideration, and he bore himself before you (be it spoken in his praise) in such a way as to leave it perfectly easy for the gentlemen engaged in this trial to show that by the books he is absolutely supported.

The learned witnesses have spoken in reference to the influence of climate and government upon the mind; they have told you what is easy to be supported; they have told you that government —that institutions, in other words, have much to do with the diseases of the mind. I read from this distinguished author to support the gentleman who so testified (p. 62):

Certain climates predispose to madness. It is very uncommon in such as are uniformly warm. Dr. Gordon informed me in his visit to Philadelphia in the year 1807, that he had never seen nor heard of a single case of madness during a residence of six years in the province of Berbice. It is a rare disease in the West Indies. While great and constant heat increases the irritability of the muscles, it gradually lessens the sensibility of the nerves and mind, and the irritability of the blood-vessels, and in these I formerly supposed the predisposition to madness to be seated. It is more common in climates alternately warm and cold, but most so in such as are generally moist and cold, and accompanied at the same time with a clouded sky.

If there be any climate under the wide-spread heavens which more than all others will predispose to insanity, it is the climate of Southern Illinois, peculiarly moist, changeable beyond any other country of this beautiful globe, or as much so as any other country in the world, warm at times and cold at other times. It may be that the climate has had something to do with the production of disease in the defendant. I have no doubt it has had much to do with it.

Instances of it are said to be most frequent in England in the month of November, at which time the weather is unusually gloomy, from the above causes. Even the transient occurrence of that kind of weather in the United States has had an influence upon this disease.

Gentlemen have attempted to laugh to scorn the learned witnesses who have appeared for the defendant—appeared for the defendant, did I say?—who have been brought here by the process of law to appear for the innocent. Why have they been laughed at—why has the smile of derision made its appearance upon the faces of gentlemen engaged in the prosecution? It was no unkind motive that prompted it, but it was an incredulity, the result of not having investigated the laws of the human mind, and the causes which produce there this disease,—that wreck and ruin, that induced these gentlemen thus to deride the learned witnesses, (Rush. p. 67):

In despotic countries where the public passions are torpid, and where life and property are secured only by the extinction of the domestic affections, madness is a rare disease. Of the truth of this remark I have been satisfied by Mr. Steward, the pedestrian traveller, who spent some time in Turkey; also by Dr. Scott,

who accompanied Lord McCartney in his embassy to China; and by Mr. Joseph Roxas, a native of Mexico, who passed nearly forty years of his life among the civilized but depressed natives of that country. Dr. Scott informed me that he heard of but a single instance of madness in China, and that was in a merchant who had suddenly lost £100,000 sterling by an unsuccessful speculation in gold dust.

Do gentlemen intend to persist in their view of this subject and to pursue that course of argumentation which has had, in part at least, for its object the derision and scorn and contempt of these witnesses? I trust they will not. Here in this free country, where every man is a sovereign in himself, where every man has an equal right to speak in govermental, religious and scientific matters, guarding himself always, as a matter of course, by that degree of prudence which shall not allow him to overstep discretion; here, where we are all free men, there is a greater tendency to mental disease than in any country of the Universe.

Dr. Rush, gentlemen of the jury, gives us another instance of insanity, from a cause almost as small as the cause which maddened the clergyman (p. 37):

Fear often produces madness, Dr. Brambilla tells us, in new recruits in the Austrian army.

I propose to read no farther from this distinguished scholar. I think, gentlemen, that almost all that has been said by the gentlemen attacking the testimony of the learned physicians who testified on the part of the defence in this case, is perceived to be of a character not very commendable.

Gentlemen, I desired specially to read the testimony upon the point of the right and wrong test which has been alluded to by Mr. Allen as the true test of responsibility in this case; a test which with my whole heart I repudiate—a test which with every faculty of my mind in full play I condemn—a test which, before God, I will never recognize until my judgment shall be convinced by reasoning more potent than any thing I have heard from any man here—a test which has been condemned in at least five instances by tribunals as enlightened and learned and just as any that ever sat in this or any other country; but, gentlemen, it may perhaps be sufficient for me to refer, according to my best recollection, to the testimony of Drs. McFarland, Roe and Spencer, and upon that reference to predicate an argument in answer to what has been said by the gentlemen on the other side, and attempt in my way to show the utter absurdity of it. Then what did Dr. McFarland say about the condition—I have incidentally noticed it already—of the mind

of defendant at the time of the perpetration of this lamentable act? He swore that in his opinion he was in a condition of insanity; that his mind was diseased to such an extent as to make it impossible for him to come to any other conclusion, even taking out many of the facts furnished by the evidence. What did Dr. Roe say? for I will take the testimony of these witnesses in the order in which they gave it. He swore, gentlemen of the jury, as you will all recollect—I appeal to you to say whether or not Dr. Roe did not swear that in his opinion the defendant was indubitably insane at the time of the perpetration of this homicide—I appeal to you, Mr. Grayson—and to you, Mr. Cowan—and to you, Mr. Edwards—and to all of you, to tell me if it was not stated by Dr. Spencer, under the sanction of an oath, that in his opinion there could be no question in reference to the existence of insanity in the defendant at the time of the perpetration of this deed; and that so far had his insanity gone, that it was impossible for him, from the impulse under which he acted, to exercise judgment and discretion?

Have I mis-stated the testimony? Not at all. What other testimony have we? We have the testimony of Mr. Rowan, who says that when Sloo came to where he was, or rather when he met Sloo, some one said, "you had better escape." What did Sloo say to him in answer? Said he, "I have done nothing for which to flee my country." What does Col. Sloo tell you in reference to the declaration of Robert, and it was painful, let me say in this connection, to be compelled to bring the father upon the stand to testify in a case like this; yet the gentlemen on the other side have declared that he deported himself well, testifying in such a manner as to commend his testimony to their approval; what then did he state in reference to Robert's declaration at the time that he met him after the perpetration of this homicide? Col. Sloo tells you that Robert remarked that he had done nothing for which to flee his country, upon being told by some one that he had better escape. Col. Sloo tells you the same thing that Maj. Rowan tells you, and if there be any thing in testimony—if there be any thing in the manner of delivering it which entitles it to consideration, and the highest degree of consideration, by a court and jury, that testimony is entitled to the highest consideration. Col. Sloo tells you, in addition, that when these publications came to be seen by Robert, he declared that it were better that his mother and sisters should be in their graves than to survive this foul slander. This, then, is the main part of the testimony of Col. Sloo, to which I invoke

your attention. There are many other points of it entitled to equal consideration, as enabling you to come to a just conclusion in reference to how you shall execute your office. Then, gentlemen, taking the testimony of Messrs. Rowan and Sloo, Robert supposed that he had committed no crime; that he had done what, in in the sight of God and in the presence of his countrymen, he had a perfect right to do. Robert C. Sloo seems, if we take that evidence in its literal acceptation, or consider it in its just bearing, not to have been in a condition, or to have had the possession of his faculties to such an extent as to enable him to know that he had done wrong in killing Hall. If Robert declared the conviction of his judgment in the hearing of these two witnesses, then his judgment was, that he had perpetrated no crime, and was responsible to no tribunal; his judgment was, that he had done nothing which he might not rightfully and lawfully do and escape punishment, for he refused to flee his country and remained here, never for a moment attempting to escape the just visitation of the law. Apart from this particular testimony, allow me to consider for a few moments the testimony of Maj. Rowan and Mr. Sexton in reference to the habits of the defendant at the bar. What were these habits? He retired to places where he might meet no one; sat upon logs and broke sticks and threw them about as an insane man would. But we are told by the learned gentlemen on the side of the prosecution that there is nothing in this; let me tell you, gentlemen, that to my mind there is much in it. Allow me, in illustration of this view, to repeat in your hearing a few words from the lunatic poet, Cowper—that man who was confined in an asylum in England in consequence of insanity:

> "Oh! for a lodge in some vast wilderness!
> Some boundless contiguity of shade."

That man desired to retire from the faces of men; it was his unhappy condition of mind that prompted him to seek seclusion and retirement, and it was in that condition, lunatic as he was, that he wrote the lines which I have quoted; and, gentlemen, in this connection, further to enforce my view, let me recite in your hearing from another English poet, almost a lunatic—I allude to Lord Byron; he says in the midst of trouble:

> "Oh that the desert were my dwelling place,
> With one fair spirit for my minister;
> That I might all forget the human race,
> And hating no one, love but only her.

Ye elements, in whose ennobling stir
I feel myself exalted, can ye not
Accord me such a being? Do I err
In deeming such inhabit many a spot,
Though with them to converse can rarely be our lot?"

"There is a pleasure in the pathless woods,
There is a rapture on the lonely shore,
There is society, where none intrudes,
By the deep sea and music in its roar;
I love not man the less, but nature more,
From these our interviews, in which I steal
From all I may be, or have been before,
To mingle with the universe, and feel
What I can ne'er express, yet cannot all conceal."

There is nothing, however, in all this. There is nothing in the fact that Robert was seen repeatedly sitting in the position I have mentioned, doing the act which I have stated. There is nothing, in the opinion of these gentlemen, in any part of the testimony which we have brought before you; and they have been so unkind as to charge us, by inuendo at least, with the fabrication of this defence for this poor youth.

Gentlemen, I will remark to you now, in reference to this charge of simulation of madness, there is not the slightest evidence—there is not one word, sirs—in the whole of the testimony of any witness; there is not one action—there is not one look—there is nothing to warrant the conclusion that the defendant has simulated madness, or that the gentlemen engaged in the defence have encouraged or been willing to encourage any such character of defence. Not one word has Sloo uttered during the whole progress of this case evidencing any purpose to simulate madness. Has Robert C. Sloo done any act which would warrant you to conclude that it was his purpose to impress you with the idea that he was insane? He has done no such thing. Has he done any thing of a violent character? Has he, by word, look, or action, caused you to suspect that he is simulating madness?

Whenever a defendant seeks to annul his responsibility to the laws of his country by simulating insanity, he is sure to do something to impress you with the suspicion that he is simulating that disease. If you ask him a question, he will answer it in such a way as to show you that he is endeavoring to make you believe that he is insane. He will assume a strange look—his conversation will be incoherent and wandering, and wild and absurd. On the contrary, every thing that has appeared in the conduct of the defend-

ant, from the commencement of this trial to the present moment, has convinced me that he is a confirmed maniac, of which, before God, in whose presence I must shortly appear, I make this solemn assertion. Here is a test laid down by Dr. Ray for the detection of the simulator of insanity. I will read this to you, and then I will demand of you, what have you seen in Robert's conduct to induce you to believe, or any man to suspect, that he is simulating madness on this occasion? (Page 353.)

Jean Pierre, aged 43 years, formerly a notary, was brought before the Court of Assizes of Paris, on the 21st of February, 1824, accused of crimes and misconduct, in which cunning and bad faith had been prominently conspicuous. He had already been condemned for forgery, and was now accused of forgery, swindling, and incendiarism. When examined after his arrest, he answered with precision every question that was put to him; but about a month after he would no longer explain himself, talked incoherently, and finally gave way to acts of fury—breaking and destroying every thing that came in his way, and throwing the furniture out of the window. At the suggestion of the medical men who were called to examine him, Jean Pierre was sent to the Bicetre, to be more closely observed. There he became acquainted with another pretended lunatic, accused also of forging and swindling, and retained in that house for the same purpose—that of being observed by the physicians. One night a violent fire broke out at the Bicetre, in three different places at once, in one of the buildings occupied by the insane, which circumstance led to the suspicion that the fire was the effect of malice. The next day it was discovered that the two supposed madmen had disappeared. Jean Pierre hid himself in Paris, in a house where his wife was employed, and where he was again arrested. Immediately on his escape from the Bicetre, he wrote a very sensible letter to one of his friends; but scarcely had he been taken, when he again assumed the character of a madman. From the indictment it appears, that the person who ran away at the same time with Jean Pierre confessed that they had formed the plan of escaping in company; that they had profited by the occurrence of the fire to put it into execution. He also said that Jean Pierre made him swear to reveal nothing; and he seems to have told as a secret to one of the officers of La Force, that the fire was the work of Jean Pierre.

All the witnesses who had any transactions with, or had known any thing of the accused before his arrest, deposed that he always seemed to them rational enough, and even very intelligent in business. One of the prisoners in La Force, who occasionally met and talked with Jean Pierre, deposed that his conversation was often very incoherent, and that in some of the phases of the moon his mind was much excited. But these observations were made *after* the arrest of the accused. It was his conduct at the trial, however, which more than any thing else proved that the madness of Jean Pierre was only assumed; for there is, perhaps, not one of his answers that would have been given by a madman. The following are a few of them :

Q. "How old are you?" A. "Twenty-six years."

He was forty-three. A lie in the mouth of the scoundrel to begin with.

Q. "Have you ever had any business with Messrs. Pellene and Desgranges?" (Two of his dupes.) A. "I don't know them."

Didn't know the men that he had cheated! Here is another falsehood demonstrating that he was affecting insanity, and that there was no insanity in him.

Q. "Do you acknowledge the pretended notarial deed which you gave this witness?" A. "I do not understand this."

Is there any thing in the character of Sloo—is there any pretence here—any acting on his part, or on the part of the gentlemen concerned in his defence, to warrant you to conclude that this is a fabricated defence?

Q. "You have acknowledged this deed before the commissary of police?" A. "Is it possible!" Q. "Why, the day of your arrest, did you tear up the bill for 3,000 francs?" A. "I don't recollect." Q. "You stated on your previous examination, that it was because the bill had been paid." (As to many other of his own depositions, the accused answered in like manner, that he did not recollect any thing about them.) Q. "Do you know this witness?" [The portress of the house he lived in.] A. "I don't know that woman." Q. "Can you point out any person who was confined in La Force with you, who can give an account of your then state of mind?" "I don't understand this." Q. "At what hour did you escape?" A. "At one o'clock." (Three o,clock.) Q. "What road did you take?" A. "That of Meaux En Bine." (He took that of Normandy.) Q. "Can yon tell who set the Bicetre on fire?" A. "I do not know what you mean." Q. "Who wrote a letter to Captain Froyoff the day after your escape from the Bicetre?" A. "I did not write the letter." (It was his own handwriting.)

When charged with setting fire to the Bicetre, Jean Pierre uttered the most horrid imprecations, and incessantly interrupted his counsel and the advocate general in their pleading, with contrrdictions, ridiculous remarks, and curses.

There is a test laid down by the learned and experienced author for the detection of simulated madness. There is a test which to my mind affords at least as safe a means for detecting a person who pretends to be insane, but who is really sane, as can be furnished. Now, gentlemen, apply the test thus furnished from an actual case which transpired in the city of Paris, to the case of Robert C. Sloo.

You have been told by my associate counsel, that in order to make out a case of simulation of madness, it would be necessary for you to suppose that his counsel could have advised him six long years ago to simulate the disease which is proved by the evidence of gentlemen who are above impeachment. I call upon you to declare upon the solemn oaths you have taken to try this case according to law and evidence, and to render such a verdict as your consciences will approve in after time, in what way the defendant has simulated madness? Does Robert C. Sloo seem to be conscious of the awful situation in which he is placed by the rash act which he committed on the 11th of November last? Have you witnessed in his

conduct here or elsewhere during the whole twenty-three days in which you have been engaged in this laborious and painful investigation, any thing that tends to the conclusion that Robert or his counsel have fabricated this defence, seeking to cheat the gallows of its due? If he had been a simulator—if he had falsely pretended to be in a diseased condition to escape the just penalty of the law for taking the life of his neighbor, you would have witnessed, perhaps ere this time, some act of violence on his part towards the court, or jury, or counsel on the one or other side, instead of beholding him thus calm and collected, thus apparently unconscious that he is in difficulty—that he is being tried for a crime, for which, if he be convicted, he will suffer upon the gallows the death penalty.

Mr. Allen has told you that if he were conscious within himself of the presence of insanity in this defendant, he would abandon this prosecution, go to his home and resume his ordinary pursuits. I have no doubt of the truth of that declaration; I have no reason to doubt it, because to doubt it would be to imply brutality on the part of Mr. Allen which would disgrace any man in the most barbarous age of the world—any mere American savage with his scalping-knife in his hand, reeking in the blood of the slain. I can not suppose him capable of entertaining other views, or being actuated by any other principle, because they would class him with the brute that perishes and never ascends upward. If he did believe it, gentlemen, I have no doubt he would abandon this prosecution, as he ought to do; if his feelings and convictions were humane, he would abandon it now and forever. But Mr. Allen occupies the position of prosecuting attorney—I speak it of all the gentlemen—I suppose it is true of them all—as the hired advocate. There is nothing wrong in that—if the widow of the deceased could hire them. He comes here to prosecute this young man for the killing of an old friend of his, as he tells you, who took him by the hand when he first entered upon the practice of the law, and sought to elevate himself to the highest point in his profession; he comes here at the instance of the widow of his old friend, to prosecute this young man upon a charge of murder, and to procure his conviction, if possible, consistently with right, for I suppose he would not go beyond what is right; he comes here invoked by the tears of the widow and the cries of the orphan, as he tells you, and begs you in consideration of those tears and those cries to convict this defendant of the crime of murder, and to consign him to an ignominious death; he comes here prompted by a motive not dis-

honorable to his heart, whenever his conduct is seen to range within such limits in the performance of what he regards to be his duty as are right and proper. Would to God I had the power to dry those tears forever; would to God some power might allay the sufferings of that crippled child, that the father might be restored to it; but this, alas! is impossible.

There is one more branch of this case to which both of the gentlemen who have spoken on the part of the State have adverted, that is, to threats made by Hall against Sloo. Permit me to call your attention to that subject in a very brief manner; it is not my object to dwell upon it at any considerable length.

It is insinuated by the gentlemen for the prosecution that Mr. Crandell, who testified to threats on the part of Hall, testified to that which is not true. They have brought before you a large number of witnesses to prove that Hall was a man of peaceable character; they attempted to prove by the same witnesses, but were stopped by the court, that John E. Hall was not only a peaceable man, but that he was also a very prudent and discreet man. Gentlemen of the jury, what is there in such an argument? What is it against the validity of the testimony of an unimpeached witness? Did Sloo ever kill anybody until he unfortunately slew Hall? His character has been as peaceable as that of any other man in this confederacy down to the time of the perpetration of this deed.

Gentlemen, there is nothing in that argument against the validity of the testimony of this witness, and you are bound to believe that he told "the truth, the whole truth, and nothing but the truth." If he did not tell the truth, why was it that although he has lived in this county upwards of ten years, that no one has been brought here to prove his bad character? Why did they not impeach him? They have not done it, and it is now unfair and unjust on their part to seek to damn him in public estimation upon the score simply that Hall was a man of peaceable character, and good demeanor. Do you forget that Hall was the author of the article signed "Truth?" That is proved by the testimony of Mr. Ingersoll, to whom Hall read it from the original MSS., although gentlemen endeavored to keep that evidence from being read to the jury, and although Mr. Ingersoll came back into this forum, and demanded the right—or asked the privilege—to be allowed to make some addition to his testimony—of frequent solicitations on the part of Hall that he would keep it secret, that he wrote that article. It was refused, yet there is enough in his testimony to fix the author-

ship of it on Mr. Hall beyond controversy. I say to you, that the man who could write such an article as that could make a threat; the man who could publish in a newspaper such an article as that, could threaten a man's life at least. I will not go further in reference to what he could do ; but at least he could utter a threat—I repeat that. The man who could calmly and deliberately sit down at his desk and there write, and afterwards as calmly and deliberately publish such an article as that, might threaten your life, Mr. Jenkins, or yours, Mr. Brown, or yours, Mr. Cowan. It has been said by one of the counsel for the prosecution, that both of these articles have been ascribed to Hall. In my humble opinion that ascription would be but just. Why do I say that? Simply because in the two articles there is a similarity of style—the same language—the same topics are treated of—the same subjects are written about—the very same sentiments are expressed ; it is scarcely possible that two articles would agree in all their essential qualities and be the productions of different minds. Then if it be true, as stated by this witness, that a threat was made by the deceased against the defendant—that that threat was communicated to him by the witness—I insist that you shall consider it for what it is worth in coming to a conclusion upon the question of insanity presented for your trial and determination.

Robert C. Sloo is diseased—he has been diseased for a long time; he was suffering under the influence of the disease at the very time when there came to his ears, through the lips of his friend, the statement that John E. Hall intended to remove him from society. What is he to understand by the use of that language? What is he to believe is the intention of Hall, thus expressed? He is to conclude, even if rational, that John E. Hall has a good deal of ill-will towards him, and will put that ill-will in act at the first opportunity that offers. Coupling the articles and their publication, and the threat made against his life, or at least against his right to remain in Shawneetown, his native town—coupling all these things together, I wish to know whether there was not an exciting cause to act upon a mind prostrated by disease?

I had intended, gentlemen, but it does not seem to me to be necessary, to detain you with comments on this testimony ; it would be like attempting to prove that the sun that lights up the morning is the sun. It would be to my mind a work of supererogation to attempt to enforce this testimony, for the testimony itself is its own best vindication—the testimony itself is, to my mind, the best

argument to support it—the testimony in my opinion is of such a character as to convince every intelligent mind, that all that it contains is essentially true. I shall not therefore attempt its enforcement any further.

When I shall cease to speak, no voice will be heard to utter a single word for the unfortunate youth who sits here almost unconscious that he is the object of deep interest—and that a tender mother, a kind father, two angel sisters, are hanging on every word I pronounce for his deliverance from the loathsome jail in which he has been so long confined, and from the still more horrible doom of the felon. Will you not deliver him from his bonds—gladden the heart of his tearful mother—rejoice the souls of his weeping sisters, and say to his father, "thy grey hairs shall not go down to the grave in sorrow; here is your son, not as when in the days of his innocent prattle he came to climb your knee and smile in your face; nor as when, in after years, he was the ornament of your family, but as he came to our hands, a wreck and a ruin,—take him, and may God grant you the boon of his speedy restoration"?